

104  
**LEGAL SERVICES CORPORATION**

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Y 4. J 89/1:104/85

Legal Services Corporation, Serial...

**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON  
COMMERCIAL AND ADMINISTRATIVE LAW  
OF THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED FOURTH CONGRESS  
SECOND SESSION

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JUNE 26, 1996

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**Serial No. 85**



DEC 17 1996

Printed for the use of the Committee on the Judiciary

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# LEGAL SERVICES CORPORATION

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WEDNESDAY, JUNE 26, 1996

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON COMMERCIAL AND  
ADMINISTRATIVE LAW,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 10:06 a.m., in room 2237, Rayburn House Office Building, Hon. George W. Gekas (chairman of the subcommittee) presiding.

Present: Representatives George W. Gekas, Henry J. Hyde, Bob Inglis, Steve Chabot, Bob Barr, Jack Reed, Jerrold Nadler, and Robert C. Scott.

Also present: Representatives John Conyers, Jr., and Zoe Lofgren.

Staff present: Raymond V. Smietanka, chief counsel; Roger T. Fleming, counsel; Susana Gutierrez, clerk; and Agnieszka Fryszman, minority counsel; full committee: Diana L. Schacht, deputy general counsel; Dan Freeman, counsel/parliamentarian; Julian Epstein, minority staff director; Perry Apfelbaum, minority general counsel; and Stephanie Peters, minority counsel.

## OPENING STATEMENT OF CHAIRMAN GEKAS

Mr. GEKAS. The hour of 10 o'clock having arrived, this hearing of the Subcommittee on Commercial and Administrative Law of the Judiciary Committee is now called to order.

We will entertain an opening statement from the Chair and from the ranking minority member, and then we will proceed to the witness testimony.

This hearing has been called for the specific purpose to oversee the operation of the legal services in our various communities vis-a-vis the appropriations restrictions that were placed upon them during the last cycle of those appropriations.

As many of you know, we wanted to implement a new system of providing legal services for the poor. Therefore, we introduced legislation last year to eliminate the leadership, of the Legal Services Corporation, the Washington-based board, and replace it with a block grant system, which would ensure State/local control in the legal services field that would guarantee maximum delivery of services to the poor.

Moreover, this legislation contained some of the restrictions that have been age-old now in the legal services realm, in addition to some new restrictions. All of these restrictions are key to allowing

the local legal services entities to concentrate on delivery of services to the poor themselves.

Over the years, we have heard a voluminous amount of testimony and anecdotes that indicated that local legal services entities were spending a lot of effort, resources, and time on class action suits and on advocacy of a whole range of subjects, to the detriment of the direct services to the poor who were literally, in one case, lining up at the door, begging for services. While the legal services lawyers were engaged in Supreme Court cases dealing with class actions, redistricting, or other matters that only tangentially and only as they saw it were services to the poor, the poor themselves could not understand why they couldn't get a domestic violence case heard by their legal services entity. The bill passed the Judiciary Committee but is still waiting floor consideration.

Today, we want to review how indeed the guidelines and the law as set forth in the appropriations funding of the legal services have been operating for a year now.

Once I hear the testimony—I hope I am able to say I told you so. If the Congress had wisely accepted my legislation, we would not have the anecdotes of dysfunction as we will hear today. I want to emphasize that what we are doing here really is a full-scale review.

One thing that I want to make clear: Had our bill been adopted, we would have taken a giant step away from what others had been trying to do to restrict legal services over the years, which I myself had voted for and that is, a restriction on the use of non-Federal funds by legal services entities back in the field. Even though some of us felt that the restrictions might be unconstitutional, in that they mandate that a local entity can not use non-Federal funds for discretionary purposes or serve some other purpose other than legal services to the poor.

Although Legal Services did not applaud my bill at all we took pains to exempt the non-Federal fund portion of the system that fed and operated the local entities to permit them to use non-Federal funds for discretionary purposes. We thought that was a giant step and a kind of carrot, as it were, for the local entities to read the handwriting on the wall about the diminution of funding for the Legal Services and thus hop on the bandwagon to help us get through a transition that would guarantee, in the end, service to the poor, which is our ultimate goal.

Before we introduce our first witnesses, I will yield to the gentleman from Rhode Island.

Mr. REED. Thank you, Mr. Chairman. And before I read my opening statement, I would like to ask unanimous consent that the members be allowed to first submit questions for the record if necessary; and, second, submit additional materials for the record; and, third, that the record remain open for the customary time; and I understand that to be 5 to 10 days so that members have time to submit statements and materials.

Mr. GEKAS. Without objection.

Mr. REED. Thank you, Mr. Chairman.

We are here again for the fourth time this Congress to revisit the legal services program, and, as we all know, the appropriation for legal services was cut by 30 percent to \$278 million, one of the

largest cuts absorbed by any Federal program. And when adjusted for inflation, this is the lowest amount of Federal funding since 1977, the third year of the Legal Services Corporation's existence.

As a result, recipients have closed over 100 local offices and laid off 14 percent of their lawyers and 16 percent of their paralegals. They have also had to turn people away. For example, in Mississippi 12 of the State's 25 legal aid offices have been shut down.

You have probably read in the Washington Post, as I did, about the woman who was turned away from her local legal services program because she did not meet the definition of which type of alien they are currently allowed to serve. She was 3 days away from her INS hearing. This lady was shot to death by an abusive partner because she could not get legal help for a restraining order. I am sure we will hear more about human toll of these cutbacks.

As the New York Times wrote in an editorial on this particular tragedy, "If the present Congress has a conscience, it will adopt this modest measure"—referring to a Kennedy amendment, Senator Kennedy's amendment—"to allow Legal Services to use non-Federal funds to handle emergency domestic violence legal problems as partial atonement for its earlier attacks on a worthy program. It should be the first step in reversing the hostilely punitive Republican assault on access to America's legal system."

I am a little puzzled about the timing of this hearing since one of the avowed purposes is to look at the new restrictions, since these new restrictions were put in place April 24, just barely 2 months ago. Yet one of the panels is going to opine about the effect of these restrictions on the operation of legal services. I think that is a rather, shall we say, hasty rush to judgment about restrictions that have been in place for less than 2 months.

The strength of our Nation's concept of equal justice under the law depends in large part on the ability of our citizens to obtain legal advice and representations. Because of the complexity of laws, rules, and regulations passed here in Washington and in the States, a person without a lawyer has a much smaller chance of resolving a dispute or even just getting their point across, whether they are in a courtroom, an administrative agency, or making a case before us in the Congress.

The Legal Services Cooperation was created in 1974 with bipartisan sponsorship and the support of the Nixon administration to address this imbalance. Its mission then, as now, was to ensure access to civil justice for all Americans.

The Legal Services Corporation has survived past ideologically-driven attacks because local legal services are effective in accomplishing their mission. They have a qualified staff, are locally controlled, are responsive to local priorities, have the support of local and State bar associations, and they produce real results for their clients, results that probably could not be replicated as efficiently and cheaply through other means.

As Howard Dana, Maine Supreme Court justice, testified at one of our earlier hearings, "Radical solutions like defunding or hamstringing the lawyers who represent the poor are solutions not worthy of a great nation."

I yield back the balance of my time, Mr. Chairman.

Mr. GEKAS. We thank the gentleman.

I would like to note the presence of the chairman of the Judiciary Committee, the gentleman from Illinois, Mr. Hyde; his counterpart, the minority ranking member on the Judiciary Committee, John Conyers of Michigan; the lady from California, Ms. Lofgren; the gentleman from Virginia, Mr. Scott; the gentleman from South Carolina, Mr. Inglis; and the gentleman from Georgia, Mr. Barr.

At this time, we will begin with testimony from the witnesses. We would ask Senator Craig to take the seat, and we also invite Ms. Waters—is she present? The gentlewoman from California was invited to testify as part of the first panel.

I might say at the outset that we have a double enjoyment. We are entertaining a Member of the Senate of the United States as one of the witnesses, who, served with many of us in the House of Representatives. Larry Craig has always been involved in people issues from the very first moment that he entered the Congress. We are glad to see him here.

I might say at the outset, and will repeat it for Ms. Waters when she comes in, that Senator Craig and Ms. Waters are both invited to remain for the balance of this hearing and may sit with us on this side of the table in a nonparticipatory way so that they can audit what is occurring without the right to ask questions.

We will repeat that when Ms. Waters appears.

In the meantime, we will begin the testimony by asking Senator Craig to proffer his statement.

#### **STATEMENT OF HON. LARRY E. CRAIG, A SENATOR IN CONGRESS FROM THE STATE OF IDAHO**

Mr. CRAIG. Well, Mr. Chairman, thank you very much for those kind remarks, and it is always a pleasure to come home. And I say that because while I enjoy the Senate a great deal, I too enjoyed the House while I was here and oftentimes refer to it as not my house but my home now. I work over in the Senate, but I often come back, and I do appreciate the oversight work you are doing in relation to legal services.

Let me also recognize the chairman of the full Judiciary Committee, Congressman Hyde.

It is great to see you, again, and to all of you who I have had the privilege to work with. But I think probably the ranking minority member clearly recognizes that from the time I left here in 1990 until today, the face of the U.S. House has changed dramatically, I think for the best, as many on my side do, but certainly there are a lot of new faces. Some I do not know, nor have I had the opportunity to meet yet.

But let me thank you for the work you have done in the area of legal services. And I would ask that my full statement be a part of the record.

Mr. GEKAS. Without objection.

Mr. CRAIG. And let me relate to you a situation that played itself out before the actions this past Congress took, and following that.

It is long past time the Legal Services Corporation be held accountable to the American public. For too long the serious flaws of this program have gone unaddressed despite the best efforts of many in Congress, including you, Mr. Chairman, and myself, and a number of our colleagues.

I don't even remember the first time that we tried to reform the legal services. I am quite sure it was when I arrived here in 1980, but the demands for that reform only increased over the years to a time when, last year, its funding was cut dramatically.

What I am not here to do is to question the intent behind the program. There is considerable support for making legal services available to the needy. Unfortunately, this program is proof that good intentions do not guarantee good results. All too often, it appears the legal work of the truly needy is being shut aside in order to pursue higher-profile cases that advance a political agenda. So for the next few moments I would like to relate to you the details of what, in my opinion, was a political agenda played out in my State of Idaho with dramatic results.

I am talking about what is now known as the *Swenson* case. My written statement will give more detail about the case. The short version is that it was an Indian adoption under the Indian Child Welfare Act. The Oglala Sioux Tribe of South Dakota intervened in the Idaho case, and they were represented by the Idaho Legal Aid Services. The case began in 1990. It moved through every level of the court in the State of Idaho and on to the U.S. Supreme Court, back down to the Idaho trial court level, and up again to the Idaho Supreme Court a second time before it was over.

In February of this year, 6 years after the Swensons began this adoption, the court terminated the biological father's parental rights and finalized the boy's adoption. Casey is now nearly 7 years old.

Throughout those 6 long years, serious questions were repeatedly raised about the appropriateness of the Legal Aid Services representing the tribe. The Swensons couldn't get any answer from the Legal Services Corporation, so they came to former Senator Steve Symms and myself for help. Months added up to years as we tried to get something other than stonewalling and hand wringing from the Legal Services Corporation about whether its scarce funds were being squandered and its regulations ignored.

In 1992, the Legal Services Corporation wrote to Senator Steve Symms saying it was still assessing whether the tribe is an eligible client, that it had significant concern as to whether the tribe meets the eligibility criteria, and that adequate documentation had not been produced to show that the tribe lacked counsel.

August 1993, they provided me with a copy of a letter they had sent to the director of the Idaho Legal Aid Services. Among other things they said, "To date, the information provided by the Legal Services Corporation to the Idaho Legal Aid Services continues to support a finding that the tribe does have"—I repeat, does have—"access to counsel. Indeed, the tribe has tribal attorneys on staff. Therefore, we cannot conclude that the tribe could not retain legal counsel or had no practical means of obtaining counsel as required under 45 CFR, part 1611."

In other words, the tribe was not entitled to representation by the Idaho Legal Aid Services. That was the conclusion.

But did the letter cause the Idaho Legal Aid or the Legal Aid Services Corporation to take any additional action to ensure Federal tax dollars were not being used inappropriately? No. The answer is, they did not.

My staff at that time were told by the Legal Services Corporation representative that they had no power to do anything to control the activities and choices of the local legal services grantee. That is right. The organization trusted with dispensing Federal tax dollars washed its hands of any responsibility as to how those dollars were to be used in my State.

Meanwhile, during the 6 years the Idaho Legal Aid was pursuing the case, the Swensons sold everything they could to pay for attorneys' fees and still came up short. They are very lucky that they live in a close-knit community that rallied to help them out with public auctions. In other words, people came together, giving of their things, selling them at public auction, to help out for this family to keep the child they now thought was theirs.

Close relatives that found themselves in need of helping came forth. Attorneys were willing to write off 6-figure fees to save the Swenson family from complete bankruptcy.

But the bottom line is, Mr. Chairman, I don't think the public policy is served when legal services lawyers give the Oglala Sioux Tribe of South Dakota a free ride and drive an Idaho family to the brink of bankruptcy.

I don't think public policy is served when needy citizens in Idaho go without legal services for 6 years so that the local legal aid can ride a high-profile case to the U.S. Supreme Court and literally spend hundreds of thousands of U.S. tax dollars to do so.

And I also certainly do not think public policy is served when the Legal Services Corporation takes years to pin down if a client is entitled to representation and then just shrugs its shoulders at the possibility that public funds are being abused.

This is by no means the only story that can be told about the problems with the Legal Services Corporation. Its ardent defenders tell us there are more needs than the organization can possibly fill on the funds that we give it, and I am sure that is absolutely true. Yet others relate story after story of abuses like this one apparently squandering those meager funds on a, and I repeat, "political agenda."

Inevitably we keep the organization going without much approval or without much reform, and so your oversight hearings are absolutely critical to bring Legal Services Corporation on track.

I hope the subcommittee will agree that this is not the kind of work we expect the Legal Services Corporation to be subsidizing with tax dollars. I am sure I speak for the Swensons, as I have worked very closely with this family over the years and others in Idaho and around the country, when I say it is high time this program was put on the right track, and I hope we are headed in the right direction. The hearing today should provide a foundation to head us in that direction or to assure that that direction is met.

Again, let me thank you for taking time to explore with me the serious problem and the tragedy that was played out in Idaho, costing literally hundreds of thousands of dollars, bringing a family to bankruptcy at a time when it was clearly obvious the parties involved, or at least in the case of the law and in the case of the Indian tribe, by Legal Services' own admission, had adequate representation within the counsel that they retained within the tribe.

With that, Mr. Chairman, I would be more than happy to respond to any questions.

[The prepared statement of Mr. Craig follows:]

PREPARED STATEMENT OF HON. LARRY E. CRAIG, A SENATOR IN CONGRESS FROM THE  
STATE OF IDAHO

Thank you, Mr. Chairman and members of the Subcommittee, for holding this important hearing today and for the opportunity to testify.

I'm here because I believe it's long past time the Legal Services Corporation was held accountable to the American public. Far too long, the serious flaws of this program have gone unaddressed, despite the best efforts of many in Congress -- including you, Mr. Chairman, and myself and a number of our colleagues. I don't even remember the first time we tried to reform Legal Services, but the demands for that reform have only increased over the years.

What I'm not here to do is question the intent behind this program. There's considerable support for making legal services available to the needy. Unfortunately, this program is proof that good intentions don't guarantee results. All too often, it appears the legal work of the truly needy is being shunted aside in order to pursue higher profile cases that advance a political agenda.

I get complaints of this kind about the Legal Services grantee in my own state of Idaho. Let me give you an example of what I'm talking about.

Almost seven years ago, a young woman agreed to have her baby son adopted by the Swenson family of Nampa, Idaho. The baby's biological father had abandoned her as soon as he learned of the pregnancy, had rejected all contacts with her or the baby, and had provided no support. Yet when the Swensons began court proceedings to officially terminate the parental rights of the biological father, his family intervened.

He was a member of the Oglala Sioux Tribe of South Dakota. Although he did not seek contact with the child, his sister did, and under the Indian Child Welfare Act, the Tribe had a right to get involved in the case.

I'm not here to talk about the Indian Child Welfare Act. What makes this case something I think this Subcommittee should consider is the involvement of the local Legal Services grantee and the Legal Services Corporation.

Idaho Legal Aid Services agreed to represent the Tribe. That was in 1990. For the next six years, this case moved through every level of court in the state of Idaho, on to the United States Supreme Court, back down to the Idaho trial court level and up again to the Idaho Supreme Court a second time, before it was over.

In February of this year -- six years after the Swensons began this adoption, the court terminated the biological father's parental rights and finalized the boy's adoption. Casey is now nearly seven years old.

What makes this long stretch even more frustrating is that throughout those six years, serious questions were repeatedly raised about the appropriateness of Legal Aid Services representing the Tribe.

The Swensons questioned the original decision made in 1990, because they believed the Tribe had access to other legal assistance. They attempted to find out from the Legal Services Corporation here in Washington whether that representation was proper or not. When they couldn't get any answers, they came to former Senator Steve Symms and myself for help.

Now, you would think that the Legal Services Corporation would be glad to be alerted that there was a question about whether its scarce funds were being squandered and its regulations ignored. Not so. Months added up to years as we tried to get something other than stonewalling and hand-wringing from the Legal Services Corporation.

In 1992, the Legal Services Corporation wrote to Senator Symms, saying it was "still assessing whether the Tribe is an eligible client," that it had "significant concerns as to whether the Tribe meets the eligibility criteria," and that adequate documentation had not been produced to show that the tribe lacked counsel.

In August, 1993, they provided me with a copy of a letter they sent to the director of Idaho Legal Aid Services. Among other things, it said:

"...To date, the information provided to LSC by ILAS continues to support a finding that the Tribe does have access to counsel. Indeed, the Tribe has tribal

attorneys on staff. Therefore, we cannot conclude that the Tribe could not retain legal counsel or had no practical means of obtaining counsel as required by 45 C.F.R. Part 1611...."

In other words, the Tribe was not entitled to representation by Idaho Legal Aid Services. But did this letter cause Idaho Legal Aid or the Legal Services Corporation to take any additional action to ensure federal tax dollars were not being used improperly?

No, it didn't. My staff at the time were told by Legal Services Corporation representatives that they had no power to do anything to control the activities and choices of the local Legal Services grantee. That's right: the organization trusted with dispensing federal tax dollars washed its hands of any responsibility as to how those dollars were used in my state.

To this day, sources familiar with this issue continue to confirm that the representation of the Oglala Sioux Tribe violated the standards of representation Legal Aid Service is supposed to follow. I've been made aware of some later letters between the Legal Services Corporation and Idaho Legal Aid Services disputing this. However, none of those letters contain any new facts showing the representation met those standards. I can only guess they were provided to make the paper trail look right -- which they do, as long as nobody reads too carefully.

Meanwhile, during the six years that Idaho Legal Aid was pursuing this case, the Swensons sold everything they could to pay their attorney fees, and still came up short. They are very lucky to live in a close-knit community that rallied to help them out with a public auction; close relatives that found them a place to stay; attorneys willing to write off a six-figure fee. Their good luck is what has kept them out of bankruptcy court.

But the bottom line is this, Mr. Chairman. I don't think public policy is served when Legal Services lawyers give the Oglala Sioux Tribe of South Dakota a free ride and drive an Idaho family to the brink of bankruptcy. I don't think public policy is served when needy citizens in Idaho go without legal services for six years so that the local Legal Aid can ride a high profile case to the U.S. Supreme Court.

And I most certainly do not think public policy is served when the Legal Services Corporation takes years to pin down if a client is entitled to representation and then just

shrugs its shoulders at the possibility that public funds are being abused.

This is by no means the only story that can be told about problems with the Legal Services Corporation. Year after year, we've debated about this program. Its ardent defenders tell us there are more needs than the organization can possibly fill on the funds we give it. Yet others relate story after story of abuses like this one, apparently squandering those meager funds on a political agenda. Inevitably, we keep the organization going without much approval and without much reform.

I hope the Subcommittee will agree that this is not the kind of work we expect the Legal Services Corporation to be subsidizing with tax dollars. I'm sure I speak for the Swensons and others in Idaho and around the country when I say that it's high time this program was put back on the right track. The hearing today will help provide the foundation needed to move in that direction.

Again, I thank you for taking the time to explore this very serious problem and for the opportunity to testify before you today.

Mr. GEKAS. We thank the Senator, and, as we have noted, the testimony that he has offered and the written portion thereof are accepted for the record.

Does any member wish to address the Senator on any part of his testimony or just to greet him if you are so inclined?

The gentleman from Michigan is recognized.

Mr. CONYERS. Thank you.

It is good to see you again, Senator Craig, and we appreciate your testimony.

Mr. CRAIG. Thank you, Congressman.

Mr. CONYERS. Tell me, sir, what are you doing about it?

Mr. CRAIG. We worked with the Swensons. We made every effort to stop Legal Services Corporation from doing what they did. We pled with them to not allow this to go forward with the Idaho Legal Aid. They said it was illegal, and then they walked away from it.

Idaho Legal Aid totally defied us. In terse phone call after phone call, they ignored it and simply went on. Finally this last year, with nearly a quarter of a million dollars of expense to the Swenson family, I tried a personal relief bill or by reducing the amount of legal aid funding and sending it directly to the Swenson family.

When that got—and it did pass the Senate. When it got over here of course, it was denied in a conference committee because it was viewed as selective funding and that we should not do that. I did not dispute that.

I think the point is, Congressman, I did everything within my power as a Congressman. I felt I was spat in the eye. I was totally ignored, even when the parent company or the parent entity at the Federal level questioned and argumentatively in a letter said that this particular case did not fit the responsibility of Idaho Legal Aid Services under the scope of their responsibility in the Indian Child Welfare Act, which we understand exists and don't dispute. The question was, did this fit it?

Mr. CONYERS. Thank you very much.

Who is pursuing this political agenda in your State in the Legal Aid, and what is the political agenda?

Mr. CRAIG. I believe that Idaho Legal Services saw this as the potential for a high-profile case. Any time they would stay with it as long as they did, when there were needy clients who clearly were in need, where there was, in this instance, the Indian tribe they were representing had the means and had the attorneys to carry on and conduct the necessary legal proceedings to defend themselves under the Indian Child Welfare Act, we questioned that, and they simply would not step away from it. And, of course, it got a lot of publicity, not only in Idaho but nationwide and in legal journals.

So it was a high-profile case. I believe it was a political agenda that profiled them, in essence.

Now, even the Indian Child Welfare Act, as a result of this case and others, is now being questioned and being reviewed, with suggestions for possible change because this took it well beyond what was intended. And Indian tribes have recognized in some instances that there was a legitimate effort at adopting Indian children, not

to take them out of the tribe but, in this case, a half-Indian child they were trying to reclaim back to the tribe.

So it was addressed both under the law, and Idaho Legal Aid, as I say, got a great deal of attention over this.

Mr. CONYERS. Thank you very much.

Mr. GEKAS. Senator, didn't you draw the conclusion at some point that the Legal Services Corporation board based in Washington would have had the power to step in and rectify the situation right from the beginning?

Mr. CRAIG. Yes, that is correct.

Mr. GEKAS. In fact, in 1993, in the letter that they sent to you and the other Senator, or wherever it was directed, not only did they acknowledge the mistake but then let it float away and not take any corrective action which they had the power to do. Isn't that correct?

Mr. CRAIG. That is my understanding. The letter clearly states that, and I quoted a portion of the letter where they said and cited the law that they felt the tribe had adequate legal counsel and therefore did not qualify. But they did nothing then to tell Idaho Legal Aid to stop or we will cut your funds off or we will cut that portion of your funds off. They simply mouthed the words and moved on.

Mr. GEKAS. We thank the Senator.

And, as I told you at the outset, if you want to remain and participate in this hearing, you can take a seat as a former Member of the House and listen carefully without questioning and participate in a nonparticipatory way. If you have other business in the Senate, you are excused.

Mr. CRAIG. Mr. Chairman, that is a very generous offer, but being as you won't grant me voting rights, I do appreciate the chance. And let me say, in closing, how much I appreciate your oversight.

One of the things that this Congress, in my opinion, has not effectively done that has resulted in this kind of an action is oversight as it relates to the intent of the law versus how it is being administered out in the field, and I think that your kind of aggressiveness in this area will cause the Legal Services Corporation to do what it ought to be doing within the law for needy people.

Mr. GEKAS. Thank you, Senator. Thanks very much.

We now welcome to the witness table the Honorable Maxine Waters, the newest member of the Judiciary Committee, the lady from California whom we invited to participate as a witness.

And as we said at the outset, before you arrived, Maxine, you would be welcome to join us on this side of the table at the conclusion of your testimony. Your written statement will be accepted as you may offer it, and you will be able to audit this hearing as a nonparticipatory member of the Judiciary Committee.

So, with that, you may proceed with your testimony.

Ms. WATERS. Mr. Chairman, I would like to ask if I can have the opportunity to revise and extend my remarks for the written record.

Mr. GEKAS. Without objection.

**STATEMENT OF HON. MAXINE WATERS, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF CALIFORNIA**

Ms. WATERS. Mr. Chairman and members, I thank you for the opportunity to be here to discuss with you Legal Services Corporation, the services that they are offering as they have been redefined in law.

Let me go back by saying that I was elected to the California State Legislature in 1976 and I served there for 14 years, and I consider that my ability to serve my constituents in the way that I did was assisted—I was assisted, rather, by legal aid. I would not have been able to address the needs of my constituents in that district had I not had tremendous help and support from the Legal Services Corporation.

As I look at the limitations that have been placed on them, I am very concerned about poor people and about working people and their ability to simply negotiate their environments and deal with the complications of our society. Let me give you a few examples.

I can recall early in 1977, I believe it was, when I got involved with a case where a woman—I will never forget her name; it was Willa T. Moore—was about to lose her home. She was about to lose her home because she had been assessed under the 1911 Assessment Act of the State of California, and she had received some bills for it, but she didn't know the difference between that bill and her tax bill.

She paid the taxes on her little home, her mortgage payments were paid, but they had created this assessment district in order to put in some new lights or something in the city, and they were billing separately without a lot of explanation. She thought it was duplicate billing. She didn't pay it, and her house was in the process of being repossessed because of the 1911 Assessment Act.

Legal Aid stepped in, and they were able not only to help represent Willa T. Moore and to save her little home, but they helped me to deal with the legislation and rewrite the legislation in ways that would inform people in an appropriate way about these assessment districts, and how they worked, and put the wording and the kind of print that could easily be read to avoid this kind of situation.

I discovered after I was involved in that case that there were many others who, whether it was the 1911 or the 1919 Assessment Act, had lost their homes because of it. But that is just one example.

Another example was a situation where older people were losing their homes because contractors were knocking on their doors and they were carrying the loan applications from some of the banks who were working with the contractors. People would fill out these contracts. The banks would grant the loan basically through the contractor without the individual ever having gone into that S&L or to that bank.

The contractors sometimes would come back out, they would place scaffolding around the house, they would never see them again, and then the payment book would come, and no work had been done. People had put their deeds up to get this work done. The contractors could never be found again. They continued to go

through these neighborhoods, getting people signed up and getting the loans extended through the banks or the S&L's.

San Diego Savings & Loan was big in working with the contractors at this time. They had every kind of scheme going on, roofs on houses and burglar alarms; you name it. People lost their homes until Legal Aid stepped in. They were able to save some of them, but they were able to help me rewrite the laws so that you didn't have unscrupulous contractors that had relationships with banks carry the paper and get unsuspecting seniors and people without a lot of education to sign on those loan documents and end up having to make these payments even though the work was never performed.

Let me tell you about another scheme that Legal Aid was so helpful to me in, student loans. Most of you have no idea what is going on with over \$5 billion in student loan rip-offs where fly-by-night operations are out there signing up students to become dental assistants, they say, and truckdrivers, and on and on and on.

They oftentimes have these schools with teachers who are not qualified. I call them the Joe Blow School of Computer Learning. They have no computers. It goes on and on and on. They get these Pell grants and these Stafford loans, and the schools are ripping them off. The students are not learning anything, and they end up owing the Government. If they get a job, their checks are garnished. They are now not eligible for housing subsidy. It goes on and on and on.

I have worked on this problem now for almost 8 years before I came here. It is hard even to get this Congress to understand. But let me tell you, it is because of Legal Aid that I was able to rewrite some of the laws in the State of California to get at those kinds of rip-offs. They are still going on, and I still have people in Legal Aid who are working on those kinds of rip-offs. But without Legal Aid, Mr. Chairman, there is no way that these poor people would have representation.

There is no way we could save the Government money that is being ripped off. But it is not only that; it is child support collection. Legal Aid in the past was very helpful in enforcing deadbeat dads to live up to their responsibilities. Families, I guess what I am trying to say, need Legal Aid very much.

I know many legislators don't like them. They didn't like the class action suits, and they have taken away their ability to do it. But I want you to know, there are poor people and working people who suffer in huge numbers.

And I am an advocate for class action suits. I believe there is a real role for Legal Aid to play in representing huge constituencies of people, whether they are the disabled who cannot negotiate the process when there is some decision by a bureaucrat that they are going to cut back on disability payments because they don't want to pay the money, and you have people out there who are hurting, who cannot fend for themselves. I mean thousands of them without Legal Aid representing these people and negotiating the system, and sometimes, yes, having to go into court. You have a lot of suffering and a lot of pain.

I think that these are just a few examples of what I think Legal Aid has done and what they could be doing.

These restrictions, I tell you, whether you are talking about no class action lawsuits, no legal assistance to legal aliens—and you will hear examples of where some women who happen to be legal aliens have no legal support, who are threatened by abusive spouses. One case, I have an example of where the woman is dead. She was killed because she couldn't get legal representation anymore.

I know nobody wants prisoners to have any kind of assistance and they do not wish Legal Aid to provide any kind of litigation assistance, and I say to you, I do not want the taxpayer dollars to go to prisoners who are trying to put in frivolous lawsuits.

However, Mr. Chairman, I maintain wherever there are human rights violations, wherever there are systems that are abusive, no matter if it be a prison, they do deserve the right to have some kind of recourse, some kind of way to address those ills, and I think there are some ways to design possibilities for them without abuses in the system on behalf of anybody, including our Legal Services Corporation.

On welfare reform, welfare reform is a hot political issue, and many people believe that all welfare recipients are lazy and not deserving of support. I know that is not true, and I know that there are States where all kinds of bureaucratic actions take place to cut people off, to deny them the assistance that the law provides for them, and yes, they should be able to go through the appeals process. But I tell you, I would challenge any one of you, including the lawyers of Congress, to go through some of these appeals processes and be able to be successful and to win.

Poor people, working people, people who are not too educated, simply need assistance to address these bureaucracies. I would like you to—I would like to conclude by saying I believe that this Government, our Government, should allow some of the resources of Government to be used on behalf of poor and working people to have legal services in the way that other people have legal services who can afford to hire lawyers.

Without Legal Services Corporation, without the work that they have done historically, and because they are not being allowed to do some of the historical work that they were designed to do, you have a lot of people in trouble out there, a lot of people who cannot address the bureaucracy and the obstacles to their being able to be treated fairly.

Mr. Chairman, I will conclude by saying, with this oversight committee, if there is anything that this committee can do to truly review the needs of many of your constituents out there and address, I think, the "mislegislation" that has now closed down the opportunity for Legal Services to represent poor people in legitimate ways, I hope this committee will do that.

I hope that we will not continue to kind of take a political response to spending Government dollars and use this as a kind of political whipping boy. I am hopeful that we will understand that there are real needs out there, and people who deserve our help, and working people who work every day who cannot afford lawyers who deserve the assistance of the Legal Services Corporation.

With that, Mr. Chairman, I will discontinue my tirade on this issue. I am just very passionate about it.

Thank you very much.

Mr. GEKAS. We thank the lady from California for her testimony. Is there anyone who wishes to address a question?

The other lady from California wishes to ask a question.

Ms. LOFGREN. Thank you, Mr. Chairman.

Congresswoman Waters, you have described the assistance that Legal Aid in your county was to you in helping to draft legislation to correct problems. And as I was listening to you, I was remembering my many years on the board of supervisors in Santa Clara County and the Legal Aid Society there that did represent individuals.

I can recall some occasions when issues were raised having to do with the regulations themselves, and one case in particular in which the regulations were deficient and there were due process problems, which is important because that is part of our Constitution. And with the help of Legal Aid, we were able to remedy these defects, the due process defects, and come up with a system that was workable and also fair.

Now, you and I both disagreed with the restrictions put into legal services last year, but I wanted to ask about something that has happened in my county. The old Legal Aid Board, which incidentally I served on in the mid-1970's, declined funding after the restrictive bill was passed last year, and a new organization formed that has no common board members, no common staff. It is a completely separate organization, and they are now the grantee, they are doing the casework, and the old organization that has declined Federal money is now doing the things that we will not allow the old grantee to do; impact cases or, for example, domestic restraining orders for people who may not have citizenship.

In fact, we had a fundraising dinner, and the district attorney in Santa Clara county, who is not only my friend but a tough, no-nonsense Republican district attorney, was part of the fundraising effort for the group that will do the advocacy work.

Has that been looked at in your county? Do you think that is a remedy that would work if the Congress fails to clean up the mess we made last year?

Ms. WATERS. Well, that is a good question. One of the things I don't have all the details on, but as I understand it, the new organization—

Mr. GEKAS. The lady is entitled to be heard.

Ms. WATERS. The new organizations are not allowed to take donations or contributions; is that correct? That is my understanding.

Well, first of all, if we had new organizations who had the same commitment as the Legal Services Corporation and their subsidiaries, I think that is absolutely outrageous and I think perhaps unconstitutional.

Certainly, those organizations that are committed to doing this work and understand the importance of it may try to do it by getting donations or contributions and doing fundraising, but it will never be enough. There are a lot of people out there who need these services, and it will be very hard to keep up with the amount of dollars that are needed to pay the salaries of the lawyers.

All of these lawyers work for less money than they would make if they were in the private sector. These are lawyers who are com-

mitted, simply committed to serving poor people and working people who cannot afford services.

So I am very proud of those efforts, and I commend those who would attempt that, but I really do believe that a combination of contributions and legal services and pro bono law are all needed in order to address the tremendous needs of poor people and working people out there in our society.

Ms. LOFGREN. So you think that, although it is commendable, it won't necessarily work around the country.

Ms. WATERS. It won't be enough. No, it will not be enough.

Mr. GEKAS. We thank the lady for her testimony.

We will recess—the gentleman from Michigan.

Mr. CONYERS. If we have a moment before we deal with the motion to adjourn which is pending on the floor, I wanted to commend the gentlewoman on her remarks. If you thought those were passionate, you ought to see Congresswoman Waters when she really is on a subject of deep commitment.

Ms. WATERS. I didn't slam the table one time.

Mr. CONYERS. That is right. And your voice carried an even tone throughout the entire presentation.

Ms. WATERS. I will have to check that out.

Mr. CONYERS. Now, what you bring as a member of this committee to this subject is some real-world experience, some hands-on, out-of-the-beltway-real-life, what happens to your constituents and why they need legal services. And so your statement is quite compelling, and I hope that it is lifted up and rebroadcast widely.

The legal services lawyers that helped you rewrite the law that was so important in your assembly career can't assist you because of their LSC regulations?

Ms. WATERS. No.

Mr. CONYERS. The legal service lawyers that came to your assistance in terms of dealing with school rip-off loans can't assist you now?

Ms. WATERS. No.

Mr. CONYERS. They can help in child support collections and arrears. But, class action suits, they can't do that. Class actions are a no-no, because they are high profile cases and serve a large number of people, known as cost-effective legal procedures. But we cannot do that now. And so, welfare reform, they better not touch any of those cases. Can't do that anymore.

And so I think your experience and views will be very helpful as we review the mission of the Legal Services Corporation and we welcome your participation on this matter.

Ms. WATERS. Thank you very much, Mr. Conyers.

Mr. GEKAS. We thank the lady.

Before we call the next panel, we will recess for the purposes of a pending vote. When we reconvene, we will entertain those witnesses at the witness table.

We are now in recess until 11:05.

[Recess.]

Mr. GEKAS. The time of the recess having expired, we bring this meeting to order by inviting the first panel to take their seats, which I note they have done. We will begin with introductions thereof, and subsequently hear their statements.

We have with us today Prof. Charles E. Rounds, who is a tenured professor at Suffolk University Law School, where he teaches, among other things, fiduciary relations. He is also counsel to the Franklin Foundation and has an active consultant practice involving trust and estate matters. In addition, he is a member of the editorial board of the Massachusetts Lawyers Weekly and is the author of several publications, including a law review article in the University of Chicago Law Journal entitled, "Social Investing, IOLTA and the Law of Trusts; the 'Settlor's Case Against the Political Use of Charitable and Client Funds.'"

With him at the witness table is Ken Boehm, who is currently the chairman of the National Legal and Policy Center in Washington. He has done extensive studies on the Legal Services Corporation and its grantees. From 1989 to 1994, Mr. Boehm was the Director of the Office of Policy Development and then counsel to the board of the Legal Services Corporation.

Also at the witness table is Allyson Tucker, a lawyer and executive director of the Individual Rights Foundation of the Center for the Study of Popular Cultures here in Washington. The Individual Rights Foundation is a national public interest law firm which manages a network of over 500 pro bono affiliated attorneys dedicated to pursuing cases that protect individual liberty and ensure free speech. Prior to her current position, Ms. Tucker was the manager of the Heritage Foundation's Center for Educational Law and Policy and an attorney at the Landmark Legal Foundation in Washington, DC.

Jack Londen joins them at the witness table. Mr. Londen is a lawyer in private practice in San Francisco, CA, where he is chairman of his firm's pro bono committee. He is a member of the American Bar Association Standing Committee on Lawyer's Public Service Responsibility and is active in the California State Bar's efforts to involve legal aid programs and pro bono programs in the provision of legal services to the poor.

That is a worthy set of bios for our first panel.

We will follow the 5-minute rule for each individual's testimony and we will accept any written statements for the record without objection. Then we will allow questioning by the Chair, the ranking member, and other members of the subcommittee keeping in mind the 5-minute rule.

We will begin with Professor Rounds.

**STATEMENT OF CHARLES E. ROUNDS, JR., PROFESSOR,  
SUFFOLK UNIVERSITY LAW SCHOOL, BOSTON, MA**

Mr. ROUNDS. Thank you, Mr. Chairman. My name is Charles Rounds.

Mr. Chairman, members of the committee, I am a professor of law at Suffolk University Law School in Boston and coauthor of the 1996 edition of "Loring: A Trustee's Handbook." The handbook will have its 100th anniversary in 1998. I am also an academic fellow of the American College of Trust and Estate Counsel and a resident scholar at the Beacon Hill Institute. I was counsel to the now terminated Franklin Trust, which was established under the will of Benjamin Franklin.

I am a longstanding opponent of the IOLTA, a scheme that takes the entrusted private property of clients and diverts it to political initiatives of the legal services industry. This travesty corrupts the bench and the bar and undermines the very concept of the private trust which Professor Maitland considered the greatest achievement of English jurisprudence.

It is through the prism of IOLTA that I have been observing the legal services industry and its myriad improprieties. I come here today to tell you of one such impropriety; namely, the ongoing political initiatives of Greater Boston Legal Services to have rent control reinstated in Boston.

In 1995, the Greater Boston Legal Services, when it was receiving Federal funds, paid \$80,000 to professional lobbyists to lobby the Massachusetts Legislature. To get around the new restrictions Congress has placed on the political activities of LSC grant recipients, Greater Boston Legal Services will decline Federal funds. It will continue to accept funds from IOLTA, the United Way, and from the Massachusetts Legislature that it was so aggressively lobbying when the Federal spigot was on.

And the poor; oh, yes, the poor. Their cases, ones that the legal services industry lobbyists trot out as proof of the unmet legal needs of the poor, many of their cases are being shunted over to the affiliated Volunteer Lawyers Project which will take Federal funds.

The shells have been moved around a bit. The money has been shifted from one account to another in a process known in the industry as realignment of resources. Congress has been defied. The United Way has been corrupted in that it is now supporting political agitation, and there is much fanfare and gloating about all of this in the Boston press. Enough is enough. It is time to pull the plug.

Now to the rent control story. Rent control is an abomination. In the words of Senator John Kerry, who up until now at least has opposed efforts to take the politics out of legal services, rent control runs down cities and costs millions.

All reasonable people now understand that rent control, first and foremost, harms, harms the poor. It makes no economic sense. The Russians understand this. In 1993, the Moscow Tenants Union voted to abolish rent control. Citizens of Massachusetts understand this. In November 1994, they voted to eliminate rent control throughout the State.

Who does not understand this? Greater Boston Legal Services and its affiliated organizations. Greater Boston Legal Services has been relentless in its efforts to thwart the wishes of the Massachusetts electorate and simple common sense. In the words of the current director of Greater Boston Legal Services, we have to look at ways to change things institutionally. As a first priority, we have to think about things systemically rather than as individual cases.

Ladies and gentlemen, legal services is the general counsel of an outdated and discredited version of the welfare state. Greater Boston Legal Services has been drafting out of its offices city ordinances and home rule petitions, the cumulative effect of which would reinstate rent control in Boston. It has been relentlessly lobbying city officials.

These initiatives have finally borne fruit. The Boston City Council recently voted to reimpose rent control in Boston, notwithstanding the State rent control ban. Of course the property owners, many of whom are poor, and many of whom are victims themselves of legal services, have filed suit to force the city to honor the state-wide ban. The litigation is ongoing. Thousands of dollars, money that could be put to productive use helping rather than hurting the poor, is being squandered in legal fees. Thousands of hours are being wasted combating this foolishness.

And who is coordinating the litigation and carrying the water on behalf of the city of Boston and a consortium of intervening rent control advocates? Who is on the pleadings? Greater Boston Legal Services, the folks who drafted and lobbied the ordinances and petitions that sparked the litigation in the first place. Legal Services is ubiquitous, unaccountable, and unreformable, and the Federal Government shouldn't be its direct or indirect accomplice.

[The prepared statement of Mr. Rounds follows:]

PREPARED STATEMENT OF CHARLES E. ROUNDS, JR., PROFESSOR, SUFFOLK  
UNIVERSITY LAW SCHOOL, BOSTON, MA

My name is Charles E. Rounds, Jr. ... Mr. Chairman ... Members of the Committee. I am a Professor of Law at Suffolk University Law School in Boston and co-author of the 1996 Edition of Loring: A Trustee's Handbook (Little, Brown & Co). The Handbook will have its hundredth anniversary in 1998. I am also an academic fellow of the American College of Trust and Estate Counsel ("ACTEC") and a resident scholar at The Beacon Hill Institute.<sup>1</sup> I was counsel to the now terminated Franklin Trust which was established under the will of Benjamin Franklin.

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<sup>1</sup> The Beacon Hill Institute, 8 Ashburton Place, Boston, MA 02108-2270; David G. Tuerck, PhD, Executive Director; (617) 573-8750; (617) 720-4272 (EXHIBIT A).

I am a longstanding opponent of IOLTA<sup>2</sup>, a scheme that takes the entrusted private property of clients and diverts it to the political initiatives of the legal services industry. This travesty corrupts the bench and the bar and undermines the very concept of the private trust which Prof. Maitland considered the greatest achievement of English jurisprudence. It is through the prism of IOLTA that I have been observing the legal services industry and its myriad improprieties.

I come here today to tell you of one such impropriety, namely the ongoing political initiatives of Greater Boston Legal Services to have rent control reinstated in Boston. In 1995, Greater Boston Legal Services, when it was receiving Federal funds, paid \$80,000<sup>3</sup> to professional lobbyists to lobby the Massachusetts legislature. To get around the new restrictions Congress has placed on the political activities of LSC grant recipients, Greater Boston Legal

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<sup>2</sup> IOLTA is an acronym for Interest on Lawyers Trust Accounts. The term is a misnomer. It should be IOCTA, Interest On Clients Trust Accounts. The states, with the voluntary complicity of the banking industry, have adopted, either by statute or judicial fiat, IOLTA programs. Under an IOLTA scheme, a lawyer is either authorized or compelled, under threat of license suspension, to commingle or pool certain client funds that the lawyer holds in trust. The income generated by the pool is then remitted for designated purposes, many of which are on the left side of the political spectrum. Lawyers are discouraged from informing their clients about the uses to which their money is being put. IOLTA's constitutionality is currently under challenge on First and Fifth Amendment grounds in the Fifth Circuit. See Washington Legal Found. v. Texas Equal Access to Justice Found., 873 F. Supp. 2 (5th Cir. 1995); on appeal 95-50160.

<sup>3</sup> Monica Halas \$12,000; Meredith & Associates \$66,000; Diane F. Paulson \$2,000.

Services will decline Federal funds.<sup>4</sup> It will continue to accept funds from IOLTA<sup>5</sup>, the United Way<sup>6</sup>, and from the Massachusetts legislature (that it was so aggressively lobbying when the Federal spigot was on). And the "poor"? Oh yes, the "poor". Their cases--the ones that the legal services industry lobbyists trot out as "proof" of the "unmet legal needs of the poor"--many of their cases are being shunted over to the affiliated Volunteer Lawyers Project which will take Federal funds.<sup>7</sup> The shells have been moved around a bit. The money has been shifted from one account to another in a process known in the industry as "realignment of resources."<sup>8</sup> Congress has been defied. The United Way has been corrupted in that it is now supporting political agitation. And there is much fanfare and gloating about all of this in the Boston press. Enough is enough. It is time to pull the plug.

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<sup>4</sup> See, The Reporter, A Quarterly of the Massachusetts Legal Assistance Corporation, Vol. 6, No. 2, May 1996, pg. 1, 10, 17.

<sup>5</sup> In 1991, for example, Greater Boston Legal Services received almost \$1 million (\$998,471) from IOLTA. See, Massachusetts Lawyers Weekly, (20 M.L.W. 117--Oct. 7, 1991). In 1995, Greater Boston Legal Services received an IOLTA grant to "preserve affordable shelter for low-income residents" of Boston "against the elimination of rent control..." See, Massachusetts Bar Assoc. Lawyers Journal, Sept. 1995, pg. 8.

<sup>6</sup> Over the years, the United Way of Massachusetts Bay has underwritten in a major way the anti-property rights political activities of the Greater Boston Legal Services. In fiscal year July 1, 1993-June 30, 1994, for example, it funneled \$619,313 to Greater Boston Legal Services for "homeless issues," "housing", "immigration," etc.

<sup>7</sup> See, The Reporter, A Quarterly of the Massachusetts Legal Assistance Corporation, Vol. 6, No. 2, May 1996, pgs. 1, 10, 17.

<sup>8</sup> Id. at pg. 10.

Now to the rent control story. Rent control is an abomination<sup>9</sup>. In the words of Senator John Kerry (D-Mass.) (who, up until now, at least, has opposed efforts to take the politics out of legal services) "[rent control]...runs down cities and costs millions."<sup>10</sup> All reasonable people now understand that rent control, first and foremost, harms the "poor". It makes no economic sense.<sup>11</sup> The Russians understand this. In 1993 the Moscow tenants' union voted to abolish rent control<sup>12</sup>. Citizens of Massachusetts understand this. In November 1994, they voted to eliminate rent control throughout the state<sup>13</sup>. Who does not understand this? Greater Boston Legal Services and its affiliated organizations. Greater Boston Legal Services has been relentless in its efforts to thwart the wishes of the Massachusetts electorate...and simple common sense. In the words of the current Director of Greater Boston Legal Services: "...we have to look at ways to change things institutionally as a first priority...[we have to] "think about

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<sup>9</sup> See, e.g., English, Held Hostage by rent control, Boston Globe, Nov. 2, 1994 (EXHIBIT B).

<sup>10</sup> Jacoby, Rent control is dead--leave it that way, Boston Globe, April 30, 1996, pg. 17 (EXHIBIT C).

<sup>11</sup> See, June 20, 1996 letter from David G. Tuerck, PhD, Executive Director, The Beacon Hill Institute, to Charles E. Rounds, Jr. (EXHIBIT D).

<sup>12</sup> See, Overlan, There's no rent control in Moscow, The Tab (Boston) April 9-April 15, 1996, pg. 17 (EXHIBIT E).

<sup>13</sup> In accordance with the directive of the Massachusetts electorate, the Massachusetts legislature enacted Chapter 400, entitled "The Massachusetts Rent Control Prohibition Act," which became law (although for a time enjoined) on January 1, 1995. Chapter 400 eliminates all existing forms of rent control, immediately and without exception, throughout the Commonwealth.

things systemically rather than as individual cases."<sup>14</sup> Ladies and gentlemen, legal services is the general counsel of an outdated and discredited version of the welfare state.

Greater Boston Legal Services has been drafting out of its offices<sup>15</sup> city ordinances and home rule petitions, the cumulative effect of which would reinstate rent control in Boston. It has been relentlessly lobbying city officials. These initiatives have finally borne fruit. The Boston City Council recently voted to reimpose rent control in Boston, notwithstanding the state rent control ban<sup>16</sup>. Of course, the property owners, many of whom are poor and many of whom are victims of legal services<sup>17</sup>, have filed suit to force the City to honor the state-wide ban<sup>18</sup>. The litigation is ongoing. Thousands of dollars--money that could be put to

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<sup>14</sup> See, The Reporter, A quarterly of the Massachusetts Legal Assistance Corporation, Vol. 2, No. 1, May 1991, pg.7

<sup>15</sup> See, e.g. April 2, 1996 letter from James M. McCreight (attorney at Greater Boston Legal Services) to Maura Hennigan (member of Boston City Council and Chairperson of the Committee on Housing) enclosing a redraft, in hard copy and on disk in IBM-compatible (Word 5.1) format, of a rent control home rule petition which Greater Boston Legal Services prepared after meeting with the City administration. Mr. McCreight is "hopeful that this can proceed to a vote either tomorrow or, at the latest, by next week's Council meeting." (EXHIBIT F)

<sup>16</sup> In late December, 1995, the City of Boston passed an Ordinance re-enacting in its entirety the City's former Rent Control Ordinance, Section 10-2 of the City of Boston Code, Chapter X.

<sup>17</sup> See, June 19, 1996 letter from David C. Parker to Charles E. Rounds, Jr. explaining how the activities of legal services organizations, such as Greater Boston Legal Services, retard the upward mobility of urban blacks. (EXHIBIT G)

<sup>18</sup> Greater Boston Real Estate Board v. City of Boston, Housing Court of the City of Boston, Civil Action No. 96-CV-00752.

productive use helping, rather than hurting, the "poor"--is being squandered in legal fees. Thousands of hours are being wasted combatting this foolishness. And who is coordinating the litigation and carrying the water on behalf of the City of Boston and a consortium of intervening rent control advocates? Who is on the pleadings? Greater Boston Legal Services<sup>19</sup>, the folks who drafted and lobbied the ordinances and petitions that sparked the litigation in the first place. Legal Services is ubiquitous, unaccountable and unreformable. And the Federal government should not be its direct or indirect accomplice.

Finally, let me offer some suggestions for consideration at another time and in another place. Some committee of this Congress ought to investigate the involvement of tax-exempt institutions such as the United Way in the political initiatives of the likes of Greater Boston Legal Services. Some committee of this Congress ought to investigate how the banking industry--through its voluntary support of IOLTA--has become a patron of the likes of Greater Boston Legal Services. But that is for another day. First, the Federal government needs to figure out how it got into this mess and how it is going to get out of it. My suggestion: pull the plug altogether...just say "no." Thank you.

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<sup>19</sup> James M. McCreight, BBO #542407, Jeffrey W. Purcell, BBO #545487, Greater Boston Legal Services, 197 Friend Street, Boston, MA 02114, (617) 371-1234, ext. 700 for the following intervenors: Massachusetts Tenants Organization, the Fenway Community Development Corporation, City Life/Vida Urbana, and the East Boston Ecumenical Community Council. It was Greater Boston Legal Services that prepared and lobbied to enactment the ordinances and home rule petitions that sparked the litigation in the first place.



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AT SUFFOLK UNIVERSITY

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## THE BEACON HILL INSTITUTE AT SUFFOLK UNIVERSITY

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The Beacon Hill Institute

for Public Policy Research

Suffolk University

8 Ashburton Place

Boston, Massachusetts

2108-2270

# VOTE \* YES ON 9

## BELLA ENGLISH

### Held hostage by rent control



WHEN YOU VOTE TUESDAY, consider the case of Anne Cox, Exhibit A in why Question 9 – prohibiting rent control – should be approved.

Cox is 72 years old and suffers from emphysema. In 1978 she and her sister bought a two-family house in Jamaica Plain. The house needed a new roof,

windows, wallpaper, paint, paneling, tile. At the age of 56, Anne, a licensed practical nurse, enrolled in night school and learned how to become a handyman. "I did just about everything but the roof and the furnace on that house," she said recently. "Just a little at a time."

To help defray the costs, each sister began to rent out rooms. Anne charged \$40 a week. Everyone seemed happy. But when her sister tried to evict a woman who wouldn't pay rent, the woman went to the Rent Equity Board and told about the "illegal rooming house."

Meanwhile, Anne's sister sold her half of the house to Anne and moved. Smart gal. Soon, the Rent Equity Board – a misnomer if ever there was one – notified Anne that she was indeed running a rooming house. In 1989, the board cut her rents back to \$22 weekly – or about three bucks a day – for two of the rooms and \$27 for the third.

Later a young man who was renting one of the rooms asked Anne if he could take over the half of the house vacated by her sister. Anne replied that she wanted to rent the seven rooms to a couple or family. The man went to housing court, claiming that Anne was harassing him, and that her dogs were making too much noise. The guy, by the way, was paying her \$27 a week.

"He told me he'd move if I'd give him \$5,000," Anne recalled. "I told him I didn't have that kind of money. He said he'd settle for \$2,500."

So Anne paid him and even gave him a bed to get rid of him. If the guy was so maltreated, why did he stay at Anne's for three years? Obviously, because he had one heck of a deal.

After that, Anne decided not to rent to anyone else.

She now has one boarder left. He pays \$20 a week for his room and the run of the house. Plus, Anne feeds him three meals a day, free. "He's a little retarded," she said, "and he loves my dog. That means a lot to me." Her sister's old apartment she rents to a couple.

Anne Cox must cover her mortgage, water, phone, gas, electricity, taxes and homeowner's insurance, plus scads of attorney's fees from this nightmare called rent control. "I never wanted a lodging house," she said. "I'm too old."

But at a hearing last June, the Rent Equity Board decreed that she was indeed running a rooming house because she and her sister had rented out some rooms. Housing court upheld the board. Inspection Services has ordered her to make extensive renovations needed to operate a rooming house, including proper second egress, a handicapped entrance and fire protection.

Anne naturally argued that she could no more do that than fly to Mars. But the rent board told her that, at the age of 72, she could go out and get financing and hire "outside management" to run her private home as a rooming house. Never mind that the two-family house isn't zoned for such a use. "Seek a zoning variance," the board said.

When she told the hearing officer she suffers from emphysema, he replied: "Where's your documentation?"

The board nixed her claims of hardship. She was ordered to immediately rent all rooms in her house, which would mean evicting the couple in the apartment next door. If she refuses, she could face contempt charges. She is appealing.

Mark Snyder, deputy administrator of the rent board, said Anne has had "ample opportunity" to show hardship and has declined to do so. "The fact that you don't want to run a rooming house is not a good enough reason," he said.

Why ever not? Whatever happened to democracy, the free market, property rights and other ideals our country was founded upon?

When she's able, Anne Cox takes the T to various stations and hands out fliers advocating Question 9. The other day a young man told her, "You're just a big property owner." Anne, wearing her three-dollar raincoat and one-dollar blouse from the thrift shop, had to laugh.

Since when did private citizens like Anne Cox become responsible for providing subsidized housing? Is it fair that people like Supreme Judicial Court Justice Ruth Abrams – who earns more than \$90,000 a year – Cambridge Mayor Ken Reeves and a host of yuppies, professors, doctors and businessmen live in rent-controlled apartments? As a matter of public policy, rent control wreaks havoc upon housing stock and tax bases. As a matter of private concern, it wreaks havoc upon people like Anne Cox.

Anne Cox, Mayor Reeves and Ruth Abrams are just three good reasons why I'm voting yes on Question 9.

1ST STORY of Level 1 printed in FULL format.

Copyright 1996 Globe Newspaper Company  
The Boston Globe

April 30, 1996, Tuesday, City Edition

SECTION: OP-ED; Pg. 17

LENGTH: 863 words

HEADLINE: Rent control is dead - leave it that way;

JEFF JACOBY;

First of two parts.

BYLINE: By Jeff Jacoby, Globe Staff

BODY:

Remember the housing crisis that exploded in Boston after voters approved Question 9 and abolished rent control in Massachusetts? Remember the tidal wave of evictions, the masses of poor senior citizens kicked out of their homes? Remember how landlords by the thousands took revenge on their formerly rent-controlled tenants, jacking their rents sky-high, then hauling them into court when they couldn't pay?

You don't remember? Of course you don't. It never happened. There was no crisis. There was only a barrage of fearmongering by tenant activists (and the politicians who toady to them), a shameless campaign to terrify voters - especially older ones - into opposing Question 9.

"If thousands of landlords suddenly jack rent up to market rates," City Councilor Thomas Keane wailed a few months before the 1994 election, "thousands of people could suddenly be out on the street."

At least he said "if." Most rent-control extremists, like Oscar Farmer of the Massachusetts Senior Action Council, simply asserted over and over that if rent control ended, disaster would follow:

"Question 9 . . . would result in huge rent increases followed by massive evictions in rent-controlled property as of Jan. 1, 1995," Farmer swore in August 1994. "Thousands of young families, working families and elderly face homelessness . . . The devastating effects of Question 9 on the elderly are of special concern. . . . Question 9 would uproot thousands . . . create a housing crisis unparalleled in the Boston area . . . no place for displaced elderly tenants to go . . . evictions would overload the welfare system, the court system and housing services."

What rubbish.

In Boston, 22,000 apartments were decontrolled with no dire consequences. Just how unnecessary rent control was soon became even clearer. To ensure that no one would be hurt by a sudden jump to market rates, the Legislature extended rent control for tenants earning as much as 60 percent of the median income - \$ 22,320 for a single person. For tenants older than 61 or disabled, the means

The Boston Globe, April 30, 1996

test allowed incomes of up to \$ 28,150 - 80 percent of the median. Despite such generous terms, fewer than 900 rent-control tenants - out of more than 22,000 - qualified for the extension.

In other words, rent control in Boston (as in Brookline and Cambridge) turned out to be exactly what landlords had been calling it: a subsidy for middle- and upper-class tenants in their prime earning years. All the talk about the typical rent-control tenant being a destitute 74-year-old widow was propaganda, camouflage for the greed of tenants who were perfectly capable of paying a fair rent for their housing. The housing "emergency" invoked when rent control began, if ever there was one, had long since vanished.

At the end of 1996, the last vestiges of rent control in Massachusetts will disappear. There are maybe 750 older tenants in Boston still covered by the temporary extension. The odds of their being evicted when rent control expires is, in round numbers, zero. Most landlords (many of whom are far from young themselves) would never dream of whacking an elderly tenant with a steep rent hike. At least one large property-management company, Forest Properties Inc., has already assured its older residents that they will never have to leave the buildings they live in, and that their rent will always stay low.

As an added safeguard, Boston's main landlord group, the Rental Housing Association, has put aside 168 apartments for any senior citizens displaced when rent control ends. Property owners of more modest means, like David Parker of the South End, have made similar offers. So far, not one tenant has applied for help. It is 18 months since Question 9 was approved. Rent control is more than 95 percent phased out. There has been no crisis, no emergency, no upheaval, no explosion of evictions.

And yet, insanely, the fearmongering goes on.

The Boston Tenant Coalition continues to shriek that thousands of poor seniors are on the verge of eviction. Barbara Burnham of the Fenway Community Development Corp. claims that "400 to 500" elderly tenants in her neighborhood alone will lose their homes at the end of the year. "These are drastic times," Mayor Menino announces. "I'm not one to cry wolf but we're looking at a housing crisis . . . and it's time for government to intervene."

Last week, jumping through Menino's hoop, 10 trained seals on the Boston City Council voted to reimpose rent control across Boston. If their so-called "just cause" bill is approved by the Legislature, it would once again be bureaucrats - not the free market - who decide how much rent a tenant ought to pay. Small property owners would once again find themselves punished for having invested in Boston. Once again, a phony crisis would be trumped up as an excuse to trample the rights of the very people who create stability and value in a city's neighborhoods.

Rent control is destructive, costly and unfair. In the words of Sen. John Kerry, "it runs down cities and costs millions." Thanks to Question 9, rent control is dead and nearly buried. To dig it up now would be stupidity of the highest order.

LANGUAGE: ENGLISH

LOAD-DATE: April 30, 1996



THE BEACON HILL INSTITUTE  
AT SUFFOLK UNIVERSITY

June 20, 1996

Professor Charles E. Rounds, Jr.  
Suffolk University Law School  
41 Temple Street  
Boston, MA 02114

Dear Professor Rounds:

Rent control is the poster child of wrongheaded economic regulation. Enacted for the supposed purpose of assuring "adequate" housing for low-income persons and families, it has the opposite effect: causing the supply of housing to shrink, with the result that such housing as is available gets rationed among the few lucky - and often wealthy - tenants who are able to get it.

This "allocative" cost is only part of the story, however. A bigger cost is the misdirection of resources into the preservation of rent control even, as in Massachusetts, against the stated will of the electorate. In this process, Legal Services puts lawyers to work for the purpose of saving a perverse regulation when those same lawyers could be doing socially useful work instead.

What emerges is a system in which a few tenants, allied with ideologues of the left, use the poor as a convenient weapon for getting taxpayers to subsidize litigation, the predictable result of which is to do harm to taxpayers and the poor alike. The Federal Government should have no part of this shabby arrangement.

Sincerely,

David G. Tuerck  
Executive Director  
Professor and Chairman of Economics

The Beacon Hill Institute

Public Policy Research

1000 Beacon Hill

Ashburton Park

Boston, Massachusetts

2008 2277

## Pols & Policies

# There's no rent control in Moscow

By Larry Ovelton  
TAB Columnist

**T**hey never give up. For some reason liberals are more tenacious than conservatives. They take defeat in stride. When they have a setback at the polls or with a candidate they simply remind themselves of Chairman Mao's dictum: "Two steps forward, one step back." I remember you just where you're going, it just takes a little longer this way.

If conservatives adopted this approach, they would have a balanced budget amendment, affirmative action would be over, the United Nations would be a museum and the public school system would be history.

The liberals have been grinding their teeth since they lost the rent control referendum question in 1984. Four years they were successful in keeping rent control in Boston.

Cambridge and Brookline. But when the concept went statewide on the ballot, they lost by 501,000 votes out of more than 2.2 million votes cast. A majority in all three cities voted in the negative.

But here they go again. With the assistance of the publicly funded Greater Boston Legal Services (Corporation) a bill has been submitted to the Boston City Council that would reinstate a form of rent control once again. As I said, they never give up.

The latest twist is to reduce the rent for tenants who have lost their jobs or have had their incomes reduced. Landlords would be forced to lower their rents based on the reduced income of their tenants. The bill states that renters would not be required to pay more than 40 percent of their income toward rent.

For example, if the current rent is \$1,000 per month and the tenant's new monthly income is \$1,000, the new rent would be \$300. And, of course, if the tenant's income is reduced to zero, the new rent would be 30 percent of zero, or zero. Now, does this make you want to run out and buy a gun?

But here they go again.  
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the publicly funded Greater  
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Corporation, a bill has been  
submitted to the Boston  
City Council that would  
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per month to the owner in the example above. Since the state provides a substantial part of Boston's budget through local aid, residents of Newton, Southfield, etc., would actually be subsidizing the renters in Boston. Fortunately, if this bill does pass, it must be approved by the state legislature as a home-rule petition.

Mayor Menino, in his cover letter to the Council, stated: "As this legislation is aimed at the prevention of a rental housing crisis that could pose a serious threat to public health and safety, I urge your Honorable Body to approve the measure at the earliest possible opportunity."

But the bill itself assumes a crisis is at hand. "A serious public emergency exists in the City of Boston with respect to the housing of substantial numbers of citizens... such an emergency will produce serious threats to the public health, safety and general welfare."

With this alarming language, one would expect to see the evicted sitting on street corners in their living room chairs or at a minimum at the courthouse hearing pleading their case. But there is no emergency. There is no housing crisis. To the contrary, one small property owner, David Parker of the South End, tried to head off this latest rent control effort by calling City Hall months ago and offering housing to those who were being displaced by the ending of rent control. The Rental Housing Association made a similar offer. There has been no response because there is no crisis.

Parker testified before the Council by noting how "in 1993 the Moscow tenants' union voted to abolish rent control, and voted in private ownership on real estate as well as individual units. They voted for complete and free exchange of property without control or restrictions from central bureaucracy. I ask that you give to the citizens of Boston the same property rights as those accorded to the citizens of Moscow. Now that seems like a reasonable request."

Larry Ovelton is executive director of the N.Y. Fair and

EXHIBIT F

GREATER BOSTON LEGAL SERVICES  
HOUSING UNIT  
197 Friend Street  
Boston, MA 02114  
(617) 371-1270, ext. 700  
FAX: (617) 371-1222

April 2, 1996--Per hand delivery

Maura Hennigan  
Chairperson, Committee on Housing  
Boston City Council  
5th Floor, Boston City Hall  
Boston, MA 02201

Re: Revised draft of home rule proposal for governmentally-involved housing

Dear Maura:

Enclosed is the redraft of the home rule proposal for governmentally-involved housing which our office prepared after meeting with members of the Administration. I have also enclosed a disk in IBM-compatible (Word 5.1) format with the redraft. Enclosed as well is a summary of the changes which were discussed.

Please contact me if you have any questions regarding this. I will be at this afternoon's public hearing and should be available before then as well. Thank you for your support, and I am hopeful that this can proceed to a vote either tomorrow or, at the latest, by next week's Council meeting.

Sincerely yours,

*Mac McCreight*  
Mac McCreight  
Attorney (ext. 724)

Enclosures

cc. Pat Canavan, Mayor's Housing Policy Advisor  
Mark Snyder, Boston Rent Equity Board/Rental Housing Resource Center

*Bob Kevin*  
Boston HUD Tenant Alliance

*David C. Parker  
136 West Concord Street  
Boston, MA 02118*

June 19, 1996

Dear Professor Rounds:

As you requested, I am putting in writing the subject matter and partial narrative of our last conversation. As you know, I have been living in the South End of Boston for 25 years. During this time I have renovated and rented residential and commercial property. The name of the primary company that I work through is Old Boston Restorations. As I informed you, on occasion I visit the Housing Court in Boston on tenant matters. During these visits I am repeatedly struck by the negative effect that is incurred by this pro-tenant Housing Court, and also by the legal service representatives who destroy economic opportunity, especially in the Black Community.

I have seen more times than I wish to mention, a young working class Black who has bought a two family home, and ends up spending all day in housing court. He, of course, pays for his time away from his job; the tenant who is usually up for non payment of rent, is more often than not, represented by a legal services' lawyer. Since the owner is struggling to make the mortgage payments and cannot afford a lawyer, he is represented by himself. The usual end result is that the cases are delayed to the tenants' advantage, brining on enormous costs to the Black property owner. This discourages responsible investment in depressed neighborhoods. And, on one occasion, I have heard the new property owner swear that he will let the property go back to the bank, and he will never buy another piece of property as a result of his frustrations.

The buying and fixing up of small rental properties is one of the few remaining ways in which a young person, without a college education, can acquire and grow wealth through hard work and good husbandry. The legal service lawyers do much to destroy the necessary market mechanics to do this, and our society and neighborhoods are suffering as a result.

Respectfully submitted,



David C. Parker

Mr. GEKAS. We will turn to you in the question and answer period.

Now Mr. Boehm.

**STATEMENT OF KENNETH F. BOEHM, CHAIRMAN, NATIONAL LEGAL AND POLICY CENTER, WASHINGTON, DC**

Mr. BOEHM. Thank you, Mr. Chairman.

Prior to joining the National Legal and Policy Center, I served on the senior staff of the Legal Services Corporation.

My simple point I would like to make as to why reform is unworkable is based on two observations. One is that with respect to the organization itself, the Legal Services Corporation, the underlying legislation was written by a legal services lawyer and was made to be so independent as to be unaccountable.

So this subcommittee did the right thing last year when they understood that the core to real reform in legal services is to change the structure.

In addition to the structure, there is also a culture of unaccountability. The program is so used to not having to account for itself, make itself accountable in the way that other Federal programs do, that it just cannot live with these types of restrictions that have been put on it, and it is very successfully getting around them, as I will detail.

Reform and legal services go together. From the very moment it started as a Federal program in the sixties and as a corporation in 1974, folks wanted to reform it. Originally, President Nixon didn't want to sign it. He threatened a veto because it looked too political. The very fact that we are discussing reform today shows that reform has not worked.

The 1996 reforms were the most far-reaching. What did they do? They basically put restrictions on lobbying, class action suits, and welfare reform cases. They restricted representation of illegal aliens, prisoners, and public housing tenants charged with drug crimes, but the problems remain. Here are four problems that are still there:

Presumptive refunding as a practical matter exists. Legal Services programs get their money year in and year out whether they do a good job or a bad job, whether they serve a lot of poor people or whether they serve a few poor people.

The competition imposed by Congress is in name only. The fact of the matter is, I don't recall reading of any programs that wanted to get their funding that didn't get their funding. And so it is not real competition as we understand it.

How many programs in the last year were cut for violating the rules or for not even doing a good job? Again, presumptive refunding is the order of the day.

Drug-related eviction cases. There is bipartisan wrath in Congress over that. There always has been, and even though there are restrictions, the restrictions allow most of the types of abuses that went on before, and the reason for that is, there are loopholes. Folks who allow their public housing unit to be used for, and financially benefit from, drug transactions as long as they are not the party charged, they are the tenant on the lease, they still can get representation. And there are news reports—we found eight of

them just yesterday—of tenants still getting representation in drug-related evictions.

Case selection remains unreformed. Legal services attorneys decide who gets case representation. Equal access to justice is the most commonly cited principle of those who advocate for the present system. In fact, there is nothing equal in the way that case selection takes place. It is not an entitlement. When a poor person comes to Legal Services, whether their case will be taken or not is entirely dependent on the legal services program and their lawyers. There is no entitlement.

Congressman Taylor summed up this bias in case selection this way: "Of 1.6 million legal matters they say they handled last year at our request, they could not find one case where they helped throw a drug dealer out of public housing or helped protect a home schooler. They have never stepped forward to help the moderate or conservative front."

When was the last time you heard Legal Services seeking to challenge an environmental law? Or when was the last time you heard of Legal Services suing to protect a blue-collar worker in his rights against his union? You don't see those types of cases because they don't exist, and the reason they don't exist is, the activist lawyers who make up Legal Services decide whether you get justice or not. So it is not equal access to justice. It is access to justice if your case comports with their agenda.

There are hundreds of examples and no time here, although we have produced hundreds of examples of abuses and political abuses of legal services.

Clearinghouse Review, which, thanks to Congress is no longer being funded, used to routinely carry political material. Here is an example of a relatively recent issue. The legislative ratings system used by the National Taxpayers Union was attacked as not being a fair rating system. What that has to do with assisting poor people with their legal problems is beyond me.

Geraldo Rivera, now a talk show host and former legal services lawyer, wrote in his autobiography, "Exposing Myself," that his legal services program, Community Action for Legal Services in New York, was, quote, where the Federal lawsuit against New York's antiabortion statute was conceived and where mountains of ideologically-motivated litigation was prepared.

We could go on and on. The biggest problem I see coming up is these corporations coming up that are independently separated but working hand in glove with the others, and it is another version of the shell game.

[The prepared statement of Mr. Boehm follows:]

PREPARED STATEMENT OF KENNETH F. BOEHM, CHAIRMAN, NATIONAL LEGAL AND  
POLICY CENTER, WASHINGTON, DC

## **LEGAL SERVICES CORPORATION: WHY REFORM IS NOT WORKING**

Good morning, Mr. Chairman and members of the Subcommittee. My name is Ken Boehm and I serve as Chairman of the National Legal and Policy Center, a legal foundation which promotes ethics, openness and accountability in government. NLPC promotes ethics through the distribution of the Code of Ethics for Government Service and through education, research and litigation.

Prior to joining the National Legal and Policy Center, I served on the senior staff of the Legal Services Corporation. In my position as Director of Policy Development and Communications and later as Assistant to the President and Counsel to the Board, I was responsible for congressional affairs for LSC and became very familiar with the LSC Act, regulations and issues.

Presently, the National Legal and Policy Center is sponsoring a Legal Services Accountability Project. This project has focused on the underlying reasons for the thirty years of controversy which have dogged the federal legal services program. At the core of the problem is a program which was designed to be so independent of the rest of the federal government so as to be unaccountable.

### The Failure of Past Attempts at Legal Services Reform

From the very inception of the legal services program up until today, the controversies which marked the program have been the same. In the name of helping the poor, program resources were used to promote political and ideological causes. Lobbying, congressional redistricting cases, abortion litigation and legal attacks on welfare reform and laws against welfare fraud all served to mark this program as being a far cry from the traditional legal aid offered to the poor by the legal profession over the years.

The best indicator that the many attempts to reform legal services over the years have all failed is the fact that the same problems cited in the 1970's are still being cited today.

### The 1996 Legal Services Reforms

The reforms of the legal services program which accompanied the 1996 appropriations for the Legal Services Corporation were the most far-reaching ever attempted. The reforms included restrictions on lobbying, class action cases, and welfare reform cases. Representation of illegal aliens, prisoners and public housing tenants charged with drug crimes was forbidden. Moreover, restrictions which applied to federal funds received by legal services programs were extended to other funds received by programs, eliminating a major avenue for abuse.

Despite the new reforms, many of the problems remain:

**Presumptive Refunding** As a practical matter, legal services programs still receive what amounts to an entitlement in the form of their annual grant. Unlike most grant situations where non-profit groups must face real competition to receive their grant, legal services funds still flow to the existing programs regardless of the quality of service rendered. The requirements for competition imposed on LSC by Congress have not resulted in any real competition largely because the Legal Services Corporation Board and staff have administered the program to make sure past recipients which desire refunding get refunding.

As before, the last year has not seen a single case in which a legal services program has been cut from funding for any violation of the rules.

**Drug-related Eviction Cases** Legal services lawyers incurred the bipartisan wrath of Congress for their representation of tenants in drug-related evictions from public housing. Some of these cases were especially damaging to the poor in that legal services lawyers fought federal and city policies designed to expedite drug-related evictions and thus impacted the lives of millions of poor tenants.

While the restriction against representation in drug-related evictions is a step in the right direction, it is filled with loopholes which have allowed legal services lawyers to continue their notorious practice of frustrating such evictions. For example, legal services lawyers can still represent family members who knew about and benefited financially from drug activity as long as they were not charged with the actual crime. And nothing in the restriction stops legal services lawyers from challenging local, state, or federal policies aimed at eliminating the drug problem in public housing.

Since the restriction went into place just two months ago, legal services lawyers have continued to represent those who face eviction because of the drug activities of members of their household.

**Case Selection** "Equal access to justice" is the most commonly cited principle of those who argue for the present legal services program. In fact, there is nothing equal in the way the legal services program determines which poor people will have their cases selected. Now, as always, legal services programs are able to arbitrarily and subjectively decide which cases merit their representation.

It is beyond argument that legal services programs select cases which fit their ideological agenda and reject those where the poor client's case doesn't fit that agenda.

Recently, Rep. Charles H. Taylor (R-N.C.) summed up the bias in case selection this way:

"Of the 1.6 million legal matters they say they handled last year, at our request, they could not find one case where

they helped throw a drug dealer out of public housing or helped protect a home schooler. They have never stepped forward to help on the moderate or conservative front."

*The Washington Post*, June 1, 1996

Aside from filing lawsuits which fit their political agenda, legal services lawyers have shown their bias through selective lobbying, campaigning on statewide referenda, production of ideological written materials and assisting in the organization of like-minded groups.

Prior to its funding through LSC being cut by Congress, the monthly publication *Clearinghouse Review* routinely carried political material far removed from day-to-day legal services issues. In its pages, one could find attacks on the legislative rating system used by the National Taxpayers Union and similar material of greater interest to political ideologues than those seeking to assist the poor.

Moreover, many legal services lawyers have candidly admitted that they served in an ideological cause. One of the more colorful legal services alumni, talk show host Geraldo Rivera, wrote in his autobiography, *Exposing Myself*, that his legal services program, Community Action for Legal Services, was where "the federal lawsuit against New York's anti-abortion statute was conceived" and where "mountains of ideologically motivated litigation was prepared."

Then, as now, legal services programs are in a position to decide which cases will be taken. The poor have no say. As long as activist lawyers continue to decide case selection, case selection will be biased.

### **The Newest Legal Services Loophole: "Interrelated Organizations"**

The new restrictions have left legal services activists looking for new ways to continue their controversial activities. Using a variation of a strategy tried in the 1980s, grantees are seeking to evade the restrictions by setting up closely affiliated but legally separate entities. A 1985 GAO investigation determined that closely affiliated groups engaged in activities prohibited to LSC grantees and that the relationships between these two sets of groups were so close that LSC should consider them one group for purposes of complying with the restrictions. (See: U.S. General Accounting Office, "The Establishment of Alternative Corporations By Selected Legal Services Corporation Grant Recipients," B-202116, August 22, 1985)

Growing numbers of legal services programs have announced that they will refuse LSC funds because of the restrictions tied to the 1996 funds. Foremost among these are Community Legal Services (CLS) of Philadelphia; the Legal Aid Society of Santa Clara, California; three Washington state grantees; and Greater Boston Legal Services.

For those programs using the "interrelated organization" strategy, the plan is simple: the original LSC grantees continue to receive bar support, private funds, and state support to continue the newly restricted activities; meanwhile, the newly created organizations will apply for and receive LSC funds to use in non-prohibited cases. Many of the new groups were created by attorneys affiliated with the former grantees.

While there is no problem with former LSC grantees wanting to turn down their LSC grant in order to continue the types of political advocacy now banned with LSC money, the close affiliations between the new and old grantees presents obvious problems.

Put simply, the possibility that former LSC grantees and new grantees will be working closely together, possibly sharing office space, research resources and even staff, means that, once again, it will be difficult to ascertain whether federal funds are being misused.

Early signs of the close ties between former and current grantees are already apparent:

- ✓ The Philadelphia Legal Assistance Center was formed by 12 lawyers from Community Legal Services to assume CLS's non-prohibited cases, setting up shop in the same building as CLS. (*The Legal Intelligencer*, January 30, 1996)
- ✓ Members of the Legal Aid Society of Santa Clara's executive committee opted to refuse LSC funds and set up a new organization to take the funds. In an unguarded moment, Legal Aid Society Vice President Elizabeth Shivell explained the tactic this way, "If [Congress] can screw people with technicalities, we can unscrew them with technicalities. That's why we're lawyers and not social workers. Two can play this game." A bar publication reported that many poverty lawyers worried that her remarks could cause trouble with Congress. (See: Carolyn Newburgh, "Legal Aid Divides to Conquer," *California Lawyer*, February 1996)

A top LSC staff member, Robert Echols, was quoted in the article just cited as describing the rash of new groups as a perfectly appropriate approach.

The Legal Services Corporation -- run by a Clinton-appointed board and managed by senior-level staff with strong ties to the groups they are charged with regulating -- has provided guidance to its programs on this issue. In a December 1995 memo to its field programs on "Applicability of Restrictions to Interrelated Organizations," LSC sets forth the factors to be considered in determining whether one group controls another, thereby subjecting both groups to the new restrictions. Among the eight criteria used to determine control are:

- ✓ Any overlap of officers, directors, or managers;
- ✓ Contractual and financial relationships;
- ✓ A close identity of interest; and
- ✓ A history of relationships among organizations.

The LSC memo pointed out that any determination as to whether these two groups are subject to common control would consider the "totality of circumstances," with the "presence or absence of any one or more of these factors" not necessarily determinative. Translation: LSC staff, with close ties to LSC grantees, will be the sole judges of whether two groups sharing office space, staff, and other resources are subject to common control, and therefore to the new restrictions.

The Legal Services Corporation Board and senior staff, like the program lawyers they oversee, are on record as vehemently opposing the new restrictions. Moreover, only LSC has jurisdiction over any violation which enabled LSC resources to be used for restricted purposes. And LSC has authority to define what is an improper relationship between two closely affiliated groups. Take all of these factors into consideration and you have yet another textbook example of how legal services lawyers can continue their longstanding political and ideological crusades at taxpayers' expense.

From the very beginning of the legal services program, every attempt at reform has failed. The basic organizational structure of LSC makes it impervious to efforts at reform, a fact wisely recognized by this Subcommittee when it passed legislation last year fundamentally changing the structure of the federal program. Unfortunately, the plan passed by this Subcommittee was substantially changed in full committee.

In conclusion, the reforms have not worked.

Legal services programs still get their annual grant automatically - regardless of the quality or quantity of their service.

Legal services programs are still handling drug-related eviction cases.

Legal services programs still get to arbitrarily decide case selection - and do so in a blatantly biased way.

And finally, legal services programs are once again setting up a shell game using interrelated groups so Congress and the public will not be able to tell when taxpayers' money is being used to promote the program's political agenda.

EXHIBITS ACCOMPANYING THE STATEMENT OF  
KENNETH F. BOEHM, CHAIRMAN,  
NATIONAL LEGAL AND POLICY CENTER

- I. Documents showing the recent involvement of legal services in drug-related public housing eviction cases.

"Eight Tenants Face Evictions From City's Public Housing," *The Buffalo News*, May 25, 1996

"Ruling Likely This Summer on Evictions Tied to Second-Party Crime," *The Buffalo News*, June 15, 1996

Letter of July 2, 1996 from Lackawanna Municipal Housing Authority Executive Director Charles Barone, Jr. to National Legal and Policy Center Chairman Ken Boehm stating that Neighborhood Legal Services has tried "to block the Authority in its efforts to clean up the drug problems that our Authority is faced with."

- II. Legal Services Accountability Project Reports

This is a series of cases, all documented with citations to the original source, illustrating many of the abuses of the legal services program funded through the Legal Services Corporation.

18TH STORY of Level 1 printed in FULL format.

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May 25, 1996, Saturday, FINAL EDITION

SECTION: LOCAL, Pg. 5C

LENGTH: 326 words

HEADLINE: EIGHT TENANTS FACE EVICTION FROM CITY'S PUBLIC HOUSING

BYLINE: TOM ERNST; News Staff Reporter

BODY:

Eight tenants of the Lackawanna Municipal Housing Authority face eviction for alleged crimes committed by members of their households as the authority tries to rid itself of drug dealers.

None of the eight heads of household who are being evicted has been charged with any crimes, and none of those who have been charged has been convicted. But because the leases are in their names, the eight tenants -- all women -- face eviction.

The action "violates their presumption of innocence," said attorney David Jay, who represents two of the tenants.

Dennis McGrath, the attorney for the other six, said the authority is "throwing its net too wide" and snaring innocent victims as well as suspects.

But LMHA officials said they are acting properly and protecting the rights of law-abiding tenants.

Leases that have been in effect for two years clearly state that the tenant, members of the tenant's household or visitors are prohibited from illegal activities, and it is the tenant's responsibility if they cause problems, according to Oscar Smukler, LMHA attorney.

"And what about the rights of the other tenants?" asked Charles Barone, executive director. "They have the right to privacy and to not have people pounding on the doors at 2 a.m. looking for drugs."

Because the eviction proceeding is a civil, not a criminal, process, the authority can evict the tenants even though there has been no criminal conviction, Smukler said.

President Clinton's recent statement concerning a "one-strike-and-you're-out" policy for residents of public housing basically was to reinforce an existing policy, Barone said.

McGrath, an attorney for Neighborhood Legal Services who has represented numerous clients of the Buffalo Municipal Housing Authority, said the Lackawanna authority is violating federal law by not following proper eviction procedures.

Not so, said Smukler and Barone, adding that authorities operate by different rules.

\* Legal Services Corporation  
grantee

11TH STORY of Level 1 printed in FULL format.

Copyright 1996 The Buffalo News  
The Buffalo News

June 15, 1996, Saturday, FINAL EDITION

SECTION: LOCAL, Pg. 5C

LENGTH: 308 words

HEADLINE: RULING LIKELY THIS SUMMER ON EVICTIONS TIED TO;  
SECOND-PARTY CRIME

BYLINE: TOM ERNST; News Staff Reporter

BODY:

A Lackawanna judge is expected to rule sometime this summer on an attempt by the city's Municipal Housing Authority to evict eight households because of alleged criminal activity by one member of each household.

City Court Judge David B. Herrmann Jr. Friday reserved decision in three cases and adjourned the other five until 11 a.m. June 28.

Attorneys will then be given additional time to submit further written arguments before Herrmann rules whether the eight can be evicted. Seven of the cases involve alleged drug sales, and the eighth concerns a homicide.

None of the defendants has been convicted.

Lackawanna Detective Paul Sojda testified under questioning by Housing Authority attorney Oscar Smukler about finding a loaded .38-caliber revolver in the home of the estranged wife of Marvin "Kenny" Barber.

He said Buffalo police identified it as the weapon used in the April 12 slaying of Calvin Crippen in the All Day-All Night Day Care Center, operated on Hazelwood Avenue by Barber's family. Crippen's body, wrapped in blankets, was found April 13 hidden among some street barriers on a dead-end street in Lackawanna.

Linda Barber, who faces eviction along with her four children, claims that her husband moved out five years ago and was only back to visit the children. However, Sojda said he has seen Barber at and near the home on many occasions.

\*  
Defense attorney Dennis M. McGrath sought dismissal of the eviction action on procedural grounds.

The other two cases argued Friday in court involve alleged drug sales.

Defense attorney David Jay questioned whether Teresa Lewis knew about her brother Robert's activities and whether Mary Martin's son, Willie, was still part of the household at the time of his arrest. Both men were picked up in April as part of a large roundup of suspected drug dealers.

LANGUAGE: ENGLISH

\* Neighborhood Legal Services lawyer

lackawanna  
municipal  
housing  
authority

7/2/96

Mr. Kenneth Boehm, Chairman  
National Legal and Policy Center  
8321 Old Courthouse Road • Suite 270  
Vienna, VA 22182

Dear Mr. Boehm

Per our conversation on 7/1/96, please find enclosed material regarding Congressman George Gekas and the House Panel hearings on controversial legal services.

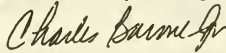
Relative to these issues under scrutiny, our Authority was the focus of a bona fide drug raid (with warrants) conducted by New York State Police and the Lackawanna Police Department on or about April 1, 1996. The following week the Lackawanna Policy Department conducted an additional raid with search warrants obtained from Lackawanna City Court.

As you can see from the enclosed information, the Neighborhood Legal Services along with the A.C.L.U are representing some of the persons involved in the raid and have continually tried to block the Authority in its efforts to clean up the drug problems that our Authority is faced with. The Lackawanna Municipal Housing Authority has conducted itself in a proper manner to get rid of these undesirable residents that undermines other tenants rights to drug-free, peaceful and healthy environment to raise their families.

Also as evidenced by the enclosed materials, it is apparent that our Authority will end up being in court for most of this summer. Obviously something must be done to deter these organizations from interfering with due process. Please be aware that 98% of the respectable residents that live here are having their rights violated while the criminal element is being catered to.

If our Authority can be of any assistance in this matter, both our Housing Attorney and myself would be available to appear before Congressman Gekas or the committee at anytime to give testimony that could be helpful to our mutual objectives.

Sincerely,  
Lackawanna Municipal Housing Authority



Charles Barone, Jr., P.H.M.  
Executive Director

# National Legal and Policy Center

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LEGAL SERVICES  
ACCOUNTABILITY  
PROJECT  
REPORT #1

## YOUR TAX DOLLARS AT WORK

From time to time, NLPC will report on the activities of grantees of the Legal Services Corporation (LSC), which receives \$415 million in federal funds. These examples are drawn from the testimony of NLPC Chairman Kenneth F. Boehm before the Subcommittee on Commercial and Administrative Law of the House Judiciary Committee on June 15, 1995. A copy of the complete testimony may be obtained by calling the number below.

**Family Loses Home Thanks to Legal Services- Idaho-** "Leland and Karla Swenson say they've sold their home to get money to fight the Ogala Sioux Tribes' effort to take their adopted son. 4. The tribe opposes the adoption because the boy, who has been with the Swensons since he was a day old, is half-Sioux. The Sioux are represented by the tax-supported Idaho Legal Services.

USA TODAY, December 16, 1993

**Legal Services Grantee Opposes Free Speech of People Opposed to Housing for Drug Addicts in Their Neighborhood- San Francisco-** A group of citizens opposed the establishment of housing in their neighborhood for recovering drug addicts and the mentally ill, stating that the building and staff were insufficient for these purposes. The citizens were subjected to a HUD investigation and attacked in the press by an attorney with the National Center for Youth Law, a grantee of LSC. The attorney stated, "The law has recognized that there is harm when somebody makes statements that result in the denial of housing to a protected class."

The San Francisco Chronicle, July 26, 1994

**House Passes Bill (432 - 0) Requiring That Criminals Give Restitution to Their Victims; The-Only Group Opposed is The National Legal Aid and Defender Association- Washington-** After the House passed a bill by a vote of 432 to 0 requiring criminals to pay compensation to their victims, only one group opposed the bill, the National Legal Aid and Defender Association (NLADA). NLADA represents legal services lawyers as well as public defenders. It receives substantial funding from LSC grantees in the form of dues and a former top official of NLADA is currently Vice President of LSC. A spokesman for NLADA questioned the constitutionality of the bill and said his group was the only one complaining about it because "it's aimed at the indigent."

The New York Times, Feb. 8, 1995

**Lawyers Report Pornography at Legal Aid Office and Get Fired By Legal Services Program for Reporting It Springfield, MO-** Two legal services attorneys at Legal Aid of Southwest Missouri (LSC grantee) searched the the LASM office, suspecting that the program's executive director was abusing his expense account. They found homemade pornographic movies which appeared to have been shot in the legal aid office itself as well as handwritten movie outlines, editing instructions and other pornographic materials. The two attorneys suspected the videos were made with a legal services video camera the executive director kept at his home. The attorneys who reported the pornography were both fired by the legal services program while the executive director merely received a one-day suspension. A county prosecutor, Darrell Moore, stated, "We have a right as taxpayers to be concerned." and "I'm puzzled about why no serious action was taken by the Legal Aid board and why there's such a hesitancy to be public about what's going on."

St. Louis Post-Dispatch, December 12, 1993

**Georgia Legal Services Files Petition to Get Double Murderer Set Free From Mental Hospital- LaGrange, GA -** David Nagel, a criminal with a "long history of anti-social behavior" and a criminal record to match, had murdered his grandparents because they refused to give him their car keys. He served 13 years in a maximum security mental hospital. Represented by an LSC grantee, Georgia Legal Services, legal attempts to free Nagel failed in the Georgia courts and then were pursued in the U.S. District Court.

Los Angeles Times, November 12, 1994

**California Legal Services Program Lobbies Against Prop 187-** "Although Prop 187 has struck a chord, it's not going to do the trick," said Claudia Smith, a lawyer with the California Rural Legal Assistance Program. "It's just a question of whether we have the time or the resources to lay Prop 187 bare."

The Houston Chronicle, September 25, 1994

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LEGAL SERVICES  
ACCOUNTABILITY  
PROJECT  
REPORT #2  
JUNE 27, 1995

## BEWARE OF LSC STATISTICS!

Advocates of continued federal funding for the \$415 million legal services program are citing a series of statistics in defense of the program. These statistics must be taken with a grain of salt for the reasons stated below. This information is taken from the testimony of NLPC President Kenneth F. Boehm before the House Judiciary Subcommittee on Commercial and Administrative Law on June 15, 1995. A copy of Boehm's complete testimony may be obtained by calling the number below. Here are the statistics cited by LSC defenders:

☛ "Legal services programs win 85% of their cases."

Comment: There are no reliable statistics whatsoever on the percentage of cases won by programs. LSC does not collect such information, has no definition as to how to calculate what a win is in a case with multiple issues, and would have no way to verify the statistics if it did collect them because client files are not available for inspection.

☛ "Since 1981, LSC's budget has only gone up [insert small number and % here]"

Comment: As anyone who ever took Statistics 101 knows, your percentage of increase is dependent on which base year you pick. LSC proponents invariably pick 1981 because it was a high water mark in appropriations and thus gives the lowest increase figure. If they picked 1977 or 1982 as a base year, the increase would be dramatically higher. Critics, of course, can play the same game by picking the first year of the program in order to show skyrocketing percentage increases.

☛ "Only 20% of the legal needs of the poor are being met."

Comment: Low figures such as 20% invariably come from bar-sponsored needs surveys which typically use questionable devices to calculate "unperceived legal needs." Answering affirmatively about a roach problem in your apartment or as to whether you've had a dispute with a store, can be interpreted as an "unperceived legal need." When these questions designed to inflate legal needs are stripped out and more realistic standards are used, the needs figure drops like a stone. A better standard might be distinguishing between "needs" and "wants."

☛ "Legal services programs handle 1.6 million cases a year."

Comment: The weasel word here is "cases." A huge percentage of what are considered cases are fairly quick provisions of advice or brief service. Past experience with this issue shows that some programs have a tendency to over count, double count, and use the most cursory contact as a case.

☛ "The legal services program has only 3% of its budget go to administrative costs."

Comment: This can be very misleading without some explanation. While the Management & Administration line of the LSC budget (the amount to run the LSC staff and headquarters) has typically been in the 3% - 4% range, there are plenty of administrative costs in field programs, national support centers and other components of the legal services system. While LSC has claimed that 97% goes directly to providing legal services to the poor through local programs, even this is not true: in that national support centers are neither local nor are they primarily engaged in providing direct representation to the poor.

☛ "Legal services programs provide just 2000 divorces a year."

Comment: This piece of misinformation is off by a country mile. It was first seen in a lobbying packet being distributed this year by the American Bar Association. The actual figure is closer to 200,000, a figure confirmed by LSC in a hearing before the House Appropriations Subcommittee in May, 1995.

☛ "Legal services programs turn away [fill in big number here] for each case they take."

Comment: The fact is there is no legal or regulatory requirement for maintaining any kind of verifiable statistics on the numbers of potential clients declined for each one accepted. Most such numbers turn out to be rough guesses with nothing approaching credibility. A clear example of this occurred at the LSC reauthorization hearing before this Subcommittee on May 16, 1995. Deputy Attorney General Jamie Gorelick stated that the Washington, DC legal services program she was associated with turned away a large number, which she stated, for each case taken. A Member asked what the basis of those statistics were. After checking with colleagues, she had to state that the basis was an estimate made by the receptionist.

# National Legal and Policy Center

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LEGAL SERVICES  
ACCOUNTABILITY  
PROJECT  
REPORT #3  
JULY 14, 1995

## LEGAL SERVICES AIDS ILLEGAL IMMIGRATION

One of the major reasons the United States has a serious illegal immigration problem is because the Legal Services Corporation funds it. For years, the legal services program has fought to secure essential services, such as health care and education, for illegal aliens. Legal services attorneys are constantly taking state governments and federal agencies to court to opposing assistance for undocumented immigrants and trying to keep illegal aliens out:

### Legal Services tries to get Medicaid for Illegals

The National Immigration Law Center, a major LSC support center, sued the state of California for adopting a law that requires those seeking emergency services under Medicaid to disclose their immigration status. Legal services attorneys contended that the law should be struck down because it would deter undocumented immigrants from seeking emergency services. Fortunately, the California Supreme Court rejected this incredible argument. However, legal services plans to take the case all the way to the US Supreme Court.

For More Information, see *BNA Health Care Daily*, December 30, 1994

### Legal Services Denounces Expulsion of Mexicans Illegally Attending US Schools

When school officials in California's Mountain Empire District, on the Mexican border, expelled hundreds of Mexicans illegally attending school there, California Rural Legal Assistance immediately denounced the action. They accused state legislator Jan Goldsmith, who blew the whistle on the practice, of fomenting an anti-Hispanic "witch hunt." The students involved, which included both Mexican and US citizens, lived in the nearby Mexican town of Tecate. Students, regardless of nationality, can only attend schools in another district if they pay \$3000 tuition. Although the expulsions saved taxpayers \$1 million, it is estimated that the potential cost of this fraud along the border could be as high as \$29 million.

See *Washington Times*, May 22, 1994

### Supports Federal Disaster Relief for Illegals

When Congress inserted a stipulation into the \$9 billion earthquake relief bill last year prohibiting non-emergency aid from going to illegal aliens, legal services condemned the action. The amendment denied illegals access to home repair loans, disaster grants and HUD housing assistance but still allowed them to collect emergency food and clothing. The National Immigration Law Center criticized this sensible measure because it would only discourage illegal aliens from seeking aid.

See *The Chicago Tribune*, February 9, 1994

### Sues INS for Trying to Enforce Immigration Laws

Exploiting every opportunity to counter efforts at controlling illegal immigration, legal services sued the INS for trying to improve its enforcement of immigration laws. In 1993, the INS ordered all resident aliens to renew green cards issued before 1978 by paying a \$70 fee. The replacement program was part of the agency's effort to end widespread document fraud that had seriously weakened the 1986 federal law prohibiting the hiring of illegals. Legal services attorneys tried to sink the plan by claiming the \$70 fee was too much.

See *The Los Angeles Times*, November 6, 1993

### Supports Political Asylum for Homosexuals

Watch Out! Legal services may be gearing up to force the US government to admit homosexuals on the basis that they are a persecuted social group. In 1994, the Immigration and Naturalization Service granted asylum to a Mexican homosexual because his sexual orientation put his life in danger in his home country. The National Immigration Law Center called it an "important precedent" in the campaign to accord sexual orientation asylum status.

See *The Houston Chronicle*, March 25, 1994

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# National Legal and Policy Center

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LEGAL SERVICES  
ACCOUNTABILITY  
PROJECT  
REPORT #4  
JULY 17, 1995

## LEGAL SERVICES VS. THE FAMILY

The record of federally funded Legal Services on social issue litigation reveals a program that is profoundly hostile to the most basic of family values. This hostility is especially apparent in the program's aggressive advocacy of abortion, support for homosexual rights, opposition to parental authority and a general disdain for the traditional family unit.

### Overtures California Parental Consent Law

In 1994, the National Center for Youth Law (NCYL), a major grantee of the Legal Services Corporation, played a pivotal role in overturning California's parental consent law. Approved by the Governor and legislature in 1987, the law required a teenager to seek the approval of a parent or a juvenile court judge before getting an abortion. Working with the American Civil Liberties Union and a private law firm, the NCYL argued that the law infringed on a teenager's autonomy, and was unnecessary anyway because allowing minors to get abortions without parental consent does not adversely affect family ties. Furthermore, they argued that there was no evidence that "abortions were harmful physically or psychologically to the teens."

For More Information, see The Recorder, July 5 and Dec. 16, 1994

### Legal Services Grantee Forces Couple to Sell Home

One of the most outrageous displays of legal services' hostility to the family is the attempt by the Idaho Legal Aid Society (ILAS) to take a four-year-old child away from his legal parents. Karla and Leland Swenson adopted a half-Sioux boy when he was one-day old and had been raising him on their Idaho dairy farm when the ILAS charged in claiming the boy should live with his Indian relatives. Neither the natural father nor the mother seek custody. However, the ILAS, representing the natural father's Indian sister, asserts an Indian tribe's efforts to preserve its cultural integrity takes precedence over the best interests of the youth. Experts argue that placing the child with a new family after four years with the only parents he has ever known would be tragic for the youth. Thanks to the ILAS, the Swensons recently sold their home to continue the fight in court.

See The Dallas Morning News, Oct. 31, 1993, and USA Today, Dec. 16, 1993

### Defender of Rapist in Parental Rights Case

Lehigh Valley Legal Services of Pennsylvania recently tried to give a teenage rapist custody of a child he fathered by his rape of a 13-year-old. Legal services attorneys argued the case even though a psychologist concluded he would endanger the child if given such rights. Nevertheless, they tried to argue that termination of the criminal's parental rights was unconstitutional on the grounds that rape is not defined in the adoption act.

See The Morning Call (Allentown), March 2, 1995

### Criticizes Parent-Requested Drug Searches

The National Center For Youth Law attacked some Idaho parents for inviting police into their homes to search for drugs they suspected their children of using. The innovative program is completely voluntary and the police do not make an arrest unless they find especially dangerous drugs or large amounts. Yet all legal services could do was admonish bereaved parents for trying to save their children.

See The Idaho Statesman, April 3, 1995

### Homosexual Advocacy

In 1989, attorneys from the Legal Aid Society of New York, an LSC grantee, successfully argued that a "gay life" partner should have the same right as a spouse to remain in a rent-controlled apartment after the tenant's death. In that case, the New York State Supreme Court basically recognized homosexual couples as the legal and moral equivalent of the traditional family.

See Braschi v. Stahl Associates, 1989 WL 73109 (NY 1989)

### Supports Public Housing for Unwed Minors

In 1993, Central Pennsylvania Legal Services sued a public housing authority because the authority refused to lease a unit to a 16-year-old girl. Lawyers tried to argue that unwed minors have a right to public housing because they meet the HUD admission criteria of being an official "category of eligible applicants." In other words, because there is a group of unwed minors any unwed minor is automatically entitled to taxpayer-subsidized housing.

See Rodriguez v. Reading Housing Authority, 8F. 3d 961 Cir. 1993

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# National Legal and Policy Center

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LEGAL SERVICES  
ACCOUNTABILITY  
PROJECT  
REPORT #5  
JULY 19, 1995

## Legal Services Contributes to Public Housing Woes

Infested with drugs, crime and broken homes, the Department of Housing and Urban Development's system of public housing is the most visible symbol of the failed welfare state. Amazingly, the federally-funded legal services program is a major reason why. Legal services lawyers are constantly trying to prevent housing authorities and tenant groups from evicting drug offenders and other disruptive individuals. Ironically, this has created a situation all over the country where legal services is fighting the very people they are supposed to be helping.

### Georgia

Georgia Legal Services tried to prevent the Macon Housing Authority from evicting Tina Burke for using her apartment to deal drugs. There was no doubt about Burke's illegal activity. Her apartment was surrounded by gangs of young men, lookouts and cars constantly pulling up to make transactions. Law enforcement officials even conducted a careful surveillance of the residence which clearly showed Burke participating in drug deals. Despite this overwhelming evidence, legal services lawyers vigorously opposed her eviction on the grounds that she was ignorant of the activity going on in her house.

In another Macon case, tenant Shon Scott was arrested after leaving a crack house two blocks from his residence. He was charged with possession of 33 pieces of crack cocaine with intent to distribute. Scott pled guilty. Incredibly, Georgia Legal Services argued that Scott's activity did not violate the terms of the lease because the illegal activity did not take place on public housing property.

These are but a few examples of the dozens of eviction cases Georgia Legal Services handled involving the Macon Housing Authority. Legal services lost all but one. However, because of legal services delaying tactics the Authority's annual legal bill has soared from \$10,000 to \$90,000.

For Further Information, see the Congressional Testimony of John Hiscox, Executive Director of the Macon Housing Authority, House Committee on the Judiciary, Subcommittee on Commercial and Administrative Law, June 15, 1995.

### Philadelphia

The Philadelphia Housing Authority attempted to evict a woman who was dealing drugs and extorting money from other tenants. Legal services filed a civil rights suit on her behalf even though legal services was informed that the F.B.I. was investigating her criminal activity. Legal services won the suit on the grounds that the PHA did not give her adequate notice of the charges. Legal services lawyers obtained \$5,500 in legal fees.

From 1994 to the present, the PHA has paid a total of \$194,281 in fees to legal services. On average, legal services attorneys are paid at a rate of \$150 per hour. Federal District Court Judges presiding in these cases have repeatedly expressed concern that legal services is charging exorbitant rates for routine cases. In fact, most of the cases belong in state court but legal services brings the cases to federal court in order to collect the fees.

See the Congressional Testimony of Michael Pileggi, Counsel for the Philadelphia Housing Authority, June 15, 1995.

### Pittsburgh

The Northside Tenants Reorganization (NTR), a tenant-managed housing complex in Pittsburgh, is locked in a bitter feud with Neighborhood Legal Services (NLS). Angry tenants say that soon after they took over on-site management of their complex in 1983, NLS attorneys began fighting all their attempts to evict vandals, drug dealers and other violent tenants. To avert a clash, NTR and the NLS reached an agreement whereby legal services would stop defending such tenants. However, says Harriet Henson, Executive Director of NTR, NLS immediately broke the agreement. Thanks to NLS's interminable appeals, it can take as long as two years to evict a problem tenant.

See Congressional Testimony of Harriet Henson, June 15 1995 and Pittsburgh Post-Gazette, Nov. 19 1994.

### New York City

Fed up with soaring crime and rampant drugs in their neighborhoods, New York City's public housing tenant associations gave strong support to the Housing Authority's new eviction plan. Currently, it can take as long as three years to evict problem tenants like drug dealers. Under the streamlined plan, the eviction process could be reduced to 3 or 4 months. The Legal Aid Society of New York denounced the move saying the eviction plan would violate the rights of tenants. How about the rights of law-abiding tenants? They complain they can sit out at night, let their children play after dark or visit someone in their own building. All legal services could say was that people are no more victimized by crime today than they were 25 years ago.

See The New York Times, August 15, 1994.

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# National Legal and Policy Center

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LEGAL SERVICES  
ACCOUNTABILITY  
PROJECT  
REPORT #6  
JULY 24, 1995

## No Friend of the Farmer

America's farmers may be the envy of the world but not to the federally-funded legal services program. All over the nation, legal services lawyers are engaged in a systematic campaign to siphon millions of dollars from small family farmers and run many right out of business in the process. The rationale for this outrageous treatment is supposedly to improve the working conditions of migrant workers. However, the reality is one of unscrupulous and opportunistic lawyers exploiting farmers and even migrants to further their political agenda, costing farmers millions in lost productivity and migrants thousands of lost jobs.

### Ohio

The Advocates for Basic Legal Equality (ABLE), a grantee of the Legal Services Corporation (LSC), sued an Ohio farmer for a litany of migrant labor law violations. The farmer was forced to spend \$14,000 to refute what turned out to be largely baseless charges. His only infraction was for failing to show the piece rate work on some employees check stubs. Nobody was underpaid. In fact, the large majority of employees were paid 2 to 3 times the minimum wage. Furthermore, the farmer had close relations with many of the workers, some of whom had been working for him for 20 years. For these and other reasons, half of the original plaintiffs dropped off the lawsuit. When the farmer asked one employee why he was on the suit, the shocked employee said he didn't even know he was a plaintiff. It seems the ABLE lawyer would deceive the workers into the suit by helping them get food stamps. This gave him the power of attorney which he would then use to include them in the lawsuit without their knowledge.

For more information, see Congressional Testimony of Libby Whitley. House Judiciary Committee. Subcommittee on Commercial and Administrative Law. June 15, 1995

### Maryland

A former employee of the LSC-funded Maryland Legal Aid Bureau says that Gregory Schell, a Legal Aid lawyer, was so intent upon suing farmers that he made it a policy of keeping them ignorant of the law. Beatrice Rivera said Schell actually chastised her once because she met with farmers to educate them on housing requirements for their migrant workers. Rivera felt she was giving growers a chance to correct problems and give immediate assistance to workers. Schell said all she did was prevent him from filing future suits. In another case, Rivera informed Schell that a farmer was making improvements in migrant housing following recommendations she made on a prior visit. Schell told her to file a complaint immediately before he could finish the repairs. Even more shocking is Rivera's account of how an associate of Schell's would visit workers' camps and actually offer alcohol and drugs to anyone who would give him information that Schell could use against the grower. Furthermore, Schell openly bragged about how he deceived workers into filing suits by having them sign forms they thought were food stamp applications but were in fact administrative complaints against their employer.

See Affidavit of Beatrice Rivera. Congressional Testimony. June 15, 1995

### South Carolina

In a similar case, legal services attorneys attacked the South Carolina Farm Bureau for publishing a handbook to help farmers comply with agricultural labor laws. They complained it would prevent them from filing suits for violations.

See Congressional Testimony of Harry Bell. June 15, 1995

### Pennsylvania

In 1989, the LSC-funded Friends of Farmworkers (FOF) sued fruitgrower Knouse Fruitlands on behalf of 16 plaintiffs. Knouse Fruitlands is a family farm run by Janet Knouse, her daughter and two sons. Targets of a carefully orchestrated FOF campaign, the Knouses were accused of violating every conceivable state and federal agricultural labor law. However, 98% of the charges were dismissed before ever going to trial. The case dragged on for three years before a jury cleared the Knouses of any wrongdoing. However, a judge reversed the jury's decision and awarded \$24,000 to the plaintiffs and \$51,000 to FOF in attorneys' fees. The Knouses spent over \$400,000 defending themselves.

See Congressional Testimony of Libby Whitley. June 15, 1995

### Texas

Texas Rural Legal Aid (TRLA) sued several vegetable growers as part of its campaign to help the Texas Farm Workers union organize workers in the High Plains area of the state. In 1985, a federal district court dismissed all charges against the growers. Notwithstanding that TRLA had been dismissed from the case, the TRLA sued to recover attorney's fees. The judge awarded \$250,000, compensating the attorneys at a rate of \$175 per hour despite the fact that the local attorneys' billing rates in the area were \$50-75 per hour. The end-result of this taxpayer-subsidized fiasco was to stick the growers with a half-million dollar legal bill and the demise of the local vegetable industry. Of the nineteen major growers in the Texas High Plains area in 1980, only two remain today.

See Congressional Testimony of Libby Whitley. June 15, 1995

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LEGAL SERVICES  
ACCOUNTABILITY  
PROJECT  
REPORT #7  
AUGUST 1, 1995

## LEGAL SERVICES CONTINUES ASSAULT ON FAMILY

The record of the federally-funded Legal Services Corporation and its grantees on pro-family issues within the past year continues to show a marked disregard for traditional values and common sense. One of the latest outrages is a Florida court case in which legal services advocated adoption rights for homosexuals.

### Legal Services Champions Right of Homosexuals to Adopt Children

Legal Services of Greater Miami, an LSC grantee, fought for the right of a homosexual couple to adopt a child. While applying for parenting classes, James Cox and his partner informed the Florida Department of Health and Rehabilitative Services (HRS) that they were gay. Because Florida law prohibits homosexuals from adopting children, HRS immediately denied their application. Legal Services of Greater Miami, the American Civil Liberties Union and homosexual activists filed a lawsuit claiming that the state's homosexual exclusion law was unconstitutional. Legal services sought declaratory and injunctive relief for their clients, citing violation of their rights to equal protection, due process and privacy. Initially, a trial court struck down the law and enjoined HRS from enforcing the statute. However, the state Supreme Court partially upheld the exclusionary law but required that it be modified to better justify the prohibition on homosexual adoptions.

For more information, see *Cox v. Florida*, No. 82,967. April 27, 1995

### LSC Grantee Supports Unfit Parent's Custody Claim

Legal services wants to take two young Chicago children from the only home they've ever known and send them to live on a distant Indian reservation. Acting on behalf of their Indian mother, Betty Jo Ironbear, Prairie State Legal Services argues that the tribe has the sole right to determine where the children should live. However, the half-Indian children have never lived on the reservation and want to stay with their aunt who got legal custody after the father's death. In addition, Ironbear has been separated from the children for years and even had her visitation rights canceled for failing to take care of them during a visit. Besides being a possible alcoholic, she is HIV positive. The children's attorney accuses Ironbear of being an unfit mother. However, legal services says her fitness as a parent is irrelevant; all that matters is that the tribe wants her.

See *Chicago Tribune*, May 27, 1994

### Couple Distraught Over Possible Loss of Adopted Son

In yet another adoption outrage, legal services lawyers are trying to take a one-year old boy away from his adoptive parents because his natural father wants him back. The problem is that, in addition to having a criminal record, the father is unemployed, unmarried and unable to support several children he already has. Despite his dubious character, Somerset-Sussex Legal Services is prepared to take the case to court. The Reverend Paul Rack and his wife are "shocked and devastated." Outraged friends and relatives of the couple are soliciting donations to defray legal costs.

See *The Record*, June 4, 1995

### Legal Services Defends Negligent Parent

In Nebraska, Legal Services, Inc. tried to reduce the child support owed by a woman to the state for taking care of her six children. The Department of Social Services (DSS) took custody of the children after discovering that she frequently left them alone in a "filthy and unsafe" residence. Since she was perfectly capable of working full-time, the state ordered her to pay \$144 a month in child support. This amount was based on her working full-time at minimum wage. Legal Services tried to reduce the child support arguing that she didn't have enough to live on. However, a state Court of Appeals rejected this argument noting that not only did she not work full-time, she also lived in free public housing and received food stamps.

See *Tamika S. v. Debra S.*, No. A-94-634 (Nebraska App. I April 4, 1995)

### Spousal Harassment

Last year, Legal Services of Iowa tried to overturn a court ruling that found a man guilty of threatening his ex-wife. Soon after their divorce, Beatrice Knight filed a petition against Roger Knight alleging several incidents of physical intimidation and verbal abuse. A trial court ruled that Knight was guilty of the incidents listed on the petition. However, legal services challenged the decision on appeal. They argued Knight's right to due process was violated because the court based its decision in part on an incident related in court - but not listed on the original petition. The incident in question, in which Roger almost caused Beatrice to wreck her car, was not even disputed by him in testimony. The state Supreme Court rejected the appeal.

See *Knight v. Knight*, No. 357/93-1809, (IA Supreme Ct.) December 21, 1994

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LEGAL SERVICES  
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REPORT #8  
AUGUST 7, 1995

## Aiding and Abetting Illegal Immigration

The complicity of the Legal Services Corporation's grantees in promoting illegal immigration is assuming scandalous proportions. If LSC grantees are not suing states for withholding services to illegals, they are suing the federal government for trying to deport aliens who have entered the country illegally. Most shocking of all, however, are the vigorous efforts of legal services programs to prevent the deportation of aliens with criminal records.

### Legal Services Sues INS for Prohibiting Residency for Criminals

Last year, California Rural Legal Assistance attempted to overturn a rule that denied legal residency to immigrant agricultural workers with serious criminal records. The workers in question were part of a special amnesty program which allows undocumented alien farmworkers present in the US since 1986, to attain temporary resident status as a precursor to full citizenship. In response to a 1990 congressional law, the Immigration and Naturalization Service issued the rule denying temporary residency to immigrant workers with one felony or three misdemeanor convictions. California Rural Legal Assistance argued that this violated their 5th Amendment rights and the Administrative Rules Procedure Act. A US Appeals Court rejected the 5th amendment claims but upheld legal services' challenge on administrative grounds.

For more information, see *Nereno v. U.S. INS*, 30 F.3d (US App. Ct.) 1994

### Drug Trafficking Alien Gets Legal Services Support

Greater Boston Legal Services tried to prevent the deportation of an alien resident who had been convicted of serious drug offenses. US law clearly allows for the deportation of a non-citizen who "at any time has been convicted of a violation of...any law or regulation of a State...relating to a controlled substance." The alien in this case, a Dominican woman, was tried, convicted and sentenced on four drug charges including two counts of possession of cocaine with intent to distribute. Nevertheless, legal services argued that the woman deserved to stay in the country. A US Court of Appeals rejected the claim.

For more information, see *White v. INS*, 17 F.3d 475 (US App. Ct.) 1994

### Atlanta Legal Aid Fights Deportation of Criminals

In 1993, the Atlanta Legal Aid Society attempted to halt the deportation of Cuban nationals convicted of committing serious crimes including murder and drug trafficking. Part of the 1980 Mariel Boatlift, the Cubans committed the crimes while on immigration parole. After release from prison, their immigration parole was revoked and were subsequently placed in detention to await return to Cuba. Atlanta Legal Aid lawyers said their detention was a violation of their constitutional right to due process of law. A US Appeals Court rejected the petition.

See *Gisbert v. U.S. AG*, 988 F.2d 1437 (US App. Ct.) 1993

### LSC Grantees Sue California for Denying Drivers Licenses to Illegals

Recently, two LSC grantees sued California's Department of Motor Vehicles for refusing to issue drivers' licenses to illegal aliens. As required by law, the DMV requires that all applicants provide proof of legal residency to obtain licenses and registration. However, the National Immigration Law Center and California Rural Legal Assistance saw fit to sue the DMV on behalf of several illegal aliens who had their applications rejected. The attorneys took the position that even if their presence in the United States is unlawful they are still entitled to a driver's license. A state appeals court didn't buy the argument and ruled that the "DMV is not only authorized but obligated" to deny licenses to illegal aliens.

See *Lauderbach v. Zelin*, 35 Cal. App. 4th 578, May 30, 1995

### Hospital Criticized for Frightening Illegals With Uniforms

In 1991, Texas Rural Legal Aid threatened to sue a hospital in MacAllen, Texas because its security guards wore uniforms resembling those of Border Patrol Agents. Legal services said this was discriminatory against illegals because it discouraged them from seeking care. Hospital spokesmen denied the charge and pointed out that they provided \$14 million in uncompensated care in 1989 alone. Hospital officials added that if they really wanted to discourage illegals from seeking their services, they would charge for parking like other hospitals.

See *Modern Healthcare*, December 17, 1990 and January 28, 1991

### US Attorney Sued by Legal Services for Enforcing Immigration Laws

In 1982, California Rural Legal Assistance sued US Attorney Joseph Russoniello for investigating allegations that unqualified aliens had been registered to vote. The purpose of his investigation was not to prosecute improperly-registered voters but to find out if someone was deliberately signing up unqualified residents. CRLA sued Russoniello on the grounds that his investigation of Spanish-speaking residents was "invidious discrimination." The Ninth Circuit Court of Appeals rejected the argument, ruling that he was only doing his job.

See *Olegues v. Russoniello*, 770 F.2d 791 (US App. Ct.) 1985

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LEGAL SERVICES  
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REPORT #9  
AUGUST 18, 1995

## LSC, REDISTRICTING AND EDUCATION FUNDING

After harassing farmers, defending illegal immigrants and halting evictions of drug dealers from public housing, one would think that LSC's network of legal service grantees would run out of questionable political activities to pursue. Not so. Legal services programs are also hard at work in legislative redistricting cases, education funding battles, and many other political advocacy cases. Below is a sampling of the record of just a few LSC grantees.

### TRLA Spearheads Legislative Redistricting Campaign

Texas Rural Legal Aid, in cooperation with the Mexican-American Legal Defense and Education Fund, filed several suits in its successful effort to prevent the Texas legislature from using 1990 census figures in apportioning state legislative districts. TRLA argued that the census undercounted racial and ethnic minorities and that any state redistricting plan based on the census would be unconstitutional. In response, the state senate drew up a plan which TRLA also found inadequate and succeeded in scuttling. One Senator complained that while the plan created districts where Hispanics would have the ability to win, the TRLA wanted a plan guaranteeing Hispanic seats.

See *Texas Lawyer*, June 12, 1995;UPI "Senate Adopts Plan" May 15, 1991

### Grantees Sue LSC Over Redistricting Litigation Ban

In 1989, the LSC banned its grantees from participating in legislative redistricting cases in which they had been heavily involved throughout the '80s. The Corporation argued that the poor would be best served if grantees concentrated on their day-to-day legal needs such as landlord-tenant disputes and family law. Determined to pursue their political agenda, however, Texas Rural Legal Aid, California Rural Legal Assistance, and North Mississippi Rural Legal Services sued the Corporation on the grounds that their financial benefactor had no right to tell them how to spend their money. A US Appeals Court disagreed. Judge Abner Mikva, now White House Counsel, wrote that "in light of the Act's mandate to LSC to ensure that the legal services program remain free from partisan political involvement, we cannot conclude that" LSC has no right to prohibit its grantees from engaging in partisan activities.

See *Texas Lawyer*, August 12, 1991

### TRLA Sues State to Force Increase in Higher Education Budget

In 1993, Texas Rural Legal Aid sued the State of Texas for not spending what it considered enough money on universities and colleges along the border. TRLA charged that the state's system of higher education financing was discriminatory because it deliberately underfunded border schools with high percentages of Hispanic students. As evidence of discriminatory intent, TRLA cited the fact that border students had to travel farther to get to college than students in other parts of the state. The state supreme court rejected the suit, arguing that the state's financing was based on geographic considerations and not national origin. The court also noted that the many Mexican-Americans living in non-border areas of the state had just as easy access to universities as other students.

See *Texas Lawyer*, October 18, 1993

### TRLA Tries to Force State Takeover of Local School Districts

In 1991, Texas Rural Legal Aid tried to require local school districts to finance the education of students outside the district. This was a heavy-handed attempt to "equalize" education financing by forcing more affluent districts to subsidize poorer ones. TRLA contended that because the state created local school districts and defined their taxing authority, all local school taxes are by definition state taxes. The state supreme court held that local taxes are not "mere creatures" of the state and that it would be unconstitutional for the state to confiscate local revenues.

See *Edgewood School Dist. v. Kirby*, No. D-0378 (TX Supreme Ct.) 1991

### School District Forced to Abandon Electoral System

In 1992, Texas Rural Legal Aid sued the Del Valle Independent School District, claiming that the district's at-large system of electing board members diluted minority voting strength. The district revised its system to provide for the selection of five members from single member districts and two at-large. However, TRLA rejected even this compromise and insisted on seven single-member districts. A trial court eventually settled on a six single member and one at-large plan.

See *Del Valle Ind. School Dist. v. Lopez*, No. D-2367 (TX Supreme Ct.) 1992

### California City Spends Fortune in Fighting Challenge to Electoral System

In California, the city of Oxnard spent \$150,000 fending off a lawsuit by California Rural Legal Assistance that would have forced the city to replace its at-large electoral system for city council members with a district-based system. CLRA withdrew the suit when attorneys' fees became too expensive.

See *Los Angeles Times*, "West County Voting Rights," June 17, 1991

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LEGAL SERVICES  
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REPORT #10  
AUGUST 25, 1995

## LEGAL SERVICES WAGES WAR ON FARMERS

The Legal Services Corporation and its network of grantees has compiled a record of harassment and abuse of America's farmers. As part of their ongoing campaign of judicial terrorism, LSC-funded grantees sue farmers on the flimsiest of charges to extort money or just run them out of business.

### CRLA Terrorizes California Farm

In the course of a 1990 harassment campaign against Gerawan Farms, California Rural Legal Assistance vandalized the farm's migrant housing facilities so they could have an excuse to sue the grower for housing violations. Repair contractors testified that the damage to sinks, doors, windows, toilets and other items was clearly intentional and that CRLA not only arranged for this vandalism but prevented repair efforts. One contractor stated that a CRLA representative even told him to "get the hell out of here" when he came to make repairs. So extensive was the vandalism that Fresno County housing inspectors testified that the housing was being damaged faster than it could be repaired. Not content with that outrageous behavior, CRLA also used a radio station to invite workers to move in to the Gerawan's housing when space was in fact limited in order to accuse them of overcrowding migrants. In addition to those outrages, it was discovered that many of the plaintiffs in the suit never even worked for Gerawan Farms or just did not exist. Several of the other plaintiffs did not want to be a part of the suit but CRLA ignored their requests to be dropped. CRLA's vendetta against Gerawan Farms cost the taxpayers more than \$450,000.

See Congressional Testimony of Dan Gerawan, June 15, 1995

### LSC Grantees File Baseless Lawsuit

In 1993, Texas Rural Legal Aid and the Migrant Legal Action Program sued the Snake Rivers Farmers Association for establishing eligibility requirements and different wage rates for operating irrigation equipment. The amazing aspect of this case is that none of the three plaintiffs stood to gain anything from the suit. One defendant who had sued to challenge the wage rates for operating irrigation equipment not only had no experience with the equipment in question but confessed to never working with the Snake Rivers Farmers Association. The court ruled he lacked standing in the case. Another defendant who challenged a requirement that a worker have 20 days experience to operate a particular type of irrigation equipment was also found to lack standing because he met the requirement. A third defendant challenging the same 20-day requirement had 6 days experience and was offered an apprentice position which would be upgraded after 14 days on the job. However, he turned down the offer and accepted a job as a firefighter. The court ruled he suffered no loss since he refused the job. As the court duly noted, TRLA and MLAP brought this case not to benefit their clients since they had clearly suffered no injury but to simply harass Snake River farmers.

See *SNAKE RIVER FARMERS' ASS. v. DOL*, No. 91-35885 (US App. Ct.) Nov. 1993

### Illinois Farmer Sued for Not Giving Workers Rides

In 1993, the Legal Assistance Foundation of Chicago sued farmers Jim and Beverly Witvoet because they did not drive their workers to and from their fields every day. Legal Assistance argued that this was a violation of their small farm exemption and should have it revoked. This exemption provides family-run farms significant financial and regulatory relief by not requiring costly adherence to the Agricultural Workers Protection Act (AWPA). To keep the exemption, small farmers must "exclusively" handle all labor contracting activity themselves which means that they can not hire contractors to recruit and transport workers. The Witvoets had no such contractor. However, Legal Assistance made the outlandish claim that the Witvoets were still in violation of the contracting provision because they allowed other people, including the workers, to provide rides. Legal Assistance went so far as to argue that if a single migrant worker rides one yard on a tractor driven by someone other than the Witvoets, then they are in violation. The court rejected this preposterous interpretation noting that a farmer would have to drive all over North America because he could not rely on airlines, trains or bus lines to transport workers.

See *Caldron v. Witvoet*, No. 92-3231 (US Appeals Ct.) July 1993

### Ohio Cannery Sued for Hiring Workers

In 1994, Advocates for Basic Legal Equality (ABLE) sued Ohio cannery operators, John and Jerry Schuett, for violating their small farm exemption. It seems the Schuett's great sin was to go to neighboring farms and offer farmhands without any immediate work an opportunity to work at their cannery. ABLE argued that the Schuett's borrowing of workers violated the family business exemption because the lending farmer recruited the workers through contracting activity. The court rejected this tenuous linkage and noted that the Schuett's activities benefited workers by providing them with jobs when none were readily available.

See *Flores v. Rios*, No. 93-3670 (US App. Ct.) 1994

### Legal Services Files Frivolous Litigation

In 1993, Farmworkers Legal Services of North Carolina sued Carolina Vegetables, Inc. to obtain workers' compensation on behalf of a man who slipped on a bar of soap outside the workers' showers. The state court of appeals rejected the claim because the injury took place outside of normal working hours and the man was lying anyway about how he sustained the injury.

See *Jaurgui v. Carolina Vegetables*, No. 92101C1173, (NC App. Ct.) 1993

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LEGAL SERVICES  
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REPORT #11  
SEPTEMBER 11, 1995

## LEGAL SERVICES CHAMPIONS AFFIRMATIVE ACTION

Through its network of 323 grantees, the federally-funded Legal Services Corporation has been a major force in the establishment of affirmative action programs throughout the nation. From the famous *Bakke* case in the 1970s to major Supreme Court cases in the 90s, legal services lawyers have been at the forefront of the campaign to make quotas, set-asides and other heavy-handed racial gimmicks standard practice at all levels of government. Below is a small sampling of the scope of legal services activities on behalf of affirmative action over the last 20 years.

### LSC Filed Brief Supporting Affirmative Action in Famous *Bakke* Case

In 1978, the Legal Services Corporation filed an amicus brief supporting the University of California's minority set-aside program in the famous *Bakke v. California Regents* case. In this case, Alan Bakke, a white medical school applicant, applied twice to enter the University of California-Davis Medical School but was rejected even though his medical exam admission scores and GPA were significantly higher than several minority students admitted under a special program. Bakke filed suit alleging reverse discrimination. The US Supreme Court declared the UC-Davis set-aside unconstitutional because it reserved places for minorities exclusively because of their race. However, LSC argued that race-exclusive programs like UC-Davis' were justified because of the need for minority doctors. LSC also argued that there was a similar need for minority attorneys who are essential to supporting affirmative action policies.

See *Regents of Univ. of Cal. v. Bakke*, No. 76-811 (US Sup. Ct.) 1978 and "Legal Services History," Dooley and Houseman, 1984, p. 10

### Mississippi Sued by Legal Services

In 1992, North Mississippi Rural Legal Services went before the US Supreme Court to argue that the State of Mississippi had failed to desegregate its universities even though the state had long-since abolished racially-exclusive admissions criteria. Legal services claimed that the existence of predominantly white and black universities in the state was inherently discriminatory. Mississippi argued that it had done its part to promote desegregation when black students were allowed to attend traditionally white schools in the late '60s. The fact that the once-segregated black universities are still predominantly black is the result of the free choice of the students themselves. The court held that Mississippi need only continue its current race-neutral policies and is under no obligation to pursue more far-reaching affirmative action programs.

See *The American Lawyer*, Lyle Denniston, March 1992

### LSC Grantee Upholds Reverse Discrimination

In 1992, the Legal Aid Society of Cincinnati helped defeat an attempt by white firefighter applicants to overturn the city's affirmative action plan. The city's quota system, adopted in the 1970s, required that at least 18% of all fire personnel be minorities. To achieve this numerical goal, the fire division made it a practice to insure that at least 40% of all new recruits were minorities. White applicants who scored higher than minority applicants on the civil service exam but were rejected sued the city for reverse discrimination. However, the Legal Aid Society intervened in the suit to argue that the use of a written test which has a disproportionate impact on minorities violates the affirmative action plan. It seems that if minority applicants were evaluated according to the same rules as white applicants less than 10% - not 40% - of new recruits would be minorities. A US Court of Appeals agreed with Legal Aid and ruled that the white applicants' constitutional rights were not violated.

See *Jensen v. City of Cincinnati*, No. 89-3783 (US App. Ct.) 1990

### Legal Services Files Baseless Discrimination Suit

East Texas Legal Services sued the city of Beaumont seeking damages for several black police officers who alleged discrimination in the department's disciplinary and promotion policies. However, the federal appeals court hearing the case ruled in favor of the Beaumont Police Department because of the comically baseless allegations of East Texas' clients. For instance, one of the former officers complained that his being fired for shoplifting at a 7-11 was patently unfair and racially motivated. Another fired officer claimed racial discrimination motivated his dismissal even though he was clearly guilty of a litany of professional violations including sleeping in his patrol car and failing to back up his fellow officers. The court also rejected an officer's claim that he was wrongly denied promotion to a S.W.A.T. team on account of race when it was brought to light he couldn't shoot straight - an essential skill in this elite unit.

See *Martin v. City of Beaumont*, B-87-1076 (US App. Ct.) 1992

### LSC Grantee Claims Racist Conspiracy Behind Firing of State Trooper

Community Legal Services of Philadelphia sued the Pennsylvania State Police for violating the civil rights of Ronald Jones when they fired him for incompetence. Originally recruited as part of a minority set-aside program and graduating last in his class at the State Police Academy, Jones had trouble from the beginning in discharging his duties. After one year of training with experienced troopers, Jones failed to demonstrate proficiency in patrolling, conducting investigations and other basic police functions, and was summarily dismissed from duty. However, Community Legal Services claimed that Jones was the object of a conspiracy directed by a racist training Captain who was determined to fire minority troopers. The evidence for such a scenario was so weak that Community Legal Services' case came down to arguing that the Captain's failure to make every effort to improve the performance of incompetent minority troopers should be taken as a sign of discriminatory intent. Rejecting this "fragile...web...of speculation," a US District Court ruled in favor of the State Police.

See *Jones v. Pennsylvania State Police*, 89-6001 (US Dist. Ct.) 1992

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LEGAL SERVICES  
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REPORT #12  
SEPTEMBER 18, 1995

## Legal Services Abuses SSDI

The federal legal services program has successfully fought to get disability benefits for hundreds of thousands of alcoholics and other substance abusers. While alcoholics need help with their disease, legal services policy of providing them checks without requiring treatment is not the way to go. In addition to these cases, LSC grantees are also busy trying to get SSDI for other undeserving recipients.

### Legal Services Extends SSDI to Addicts

In this landmark case, Neighborhood Legal Services of Pittsburgh, an LSC grantee, successfully argued for the rights of alcoholics to receive Social Security Disability benefits (SSDI). In the 1970s and early '80s, legal services client, Charles Porter, had applied three times for assistance but was turned down by the Social Security Administration because his ailments were largely the result of chronic alcoholism. Porter drank an average of two pints of alcohol a day, had been in and out of rehab programs and was unable to hold a steady job. Porter even admitted that he "can't help the drinking." In 1985, the US Court of Appeals for the Third Circuit struck down the Social Security Administration's prohibition of dispensing assistance to alcoholics. It was argued that alcoholism is a disease not subject to individual control and since Porter was clearly unable to control his drinking, that alone justified his eligibility for benefits. Thanks in part to legal services, an estimated 250,000 alcoholics and drug addicts are receiving 1.4 billion dollars a year in welfare to support their habit.

See *Porter v. Heckler*, 771 F.2d 682 (US App. Ct.) 1985, and Congressional Testimony of Senator William Cohen, Senate Special Committee on Aging, February 10, 1994.

### Community Legal Services Gets Welfare for Man Who Just Can't Wait

Since the Porter case, LSC grantees have been aggressively advocating the rights of alcoholics to disability payments. In 1990, Community Legal Services of Philadelphia argued that another alcoholic, Leroy Johnson, was wrongly denied benefits when he applied on the grounds that his alcoholism and bad knee prevented him from working. A federal district court held that the Social Security Administration erred in saying Johnson could find gainful employment in less physical jobs because they failed to take into account his alcoholism. SSA said Johnson could control his alcohol consumption and thus should not receive benefits. As evidence of control, the SSA cited the claimant's ability to wait to drink until the liquor store opens in the morning. The court rejected SSA's claim because he keeps alcohol in the house so he can drink when he awakens. Legal services argued that Johnson's inability to wait until the liquor store opens, his drinking while in rehab and his being turned away from AA meetings because of drunkenness only reinforces his claim to disability.

See *Johnson v. Sullivan*, 749 F. Supp. 664 (US Dist. Ct.) 1990.

### Man Gets SSDI Because He Needs Drink to Pick up Welfare Check

In 1992, Community Legal Services of Philadelphia successfully represented an alcoholic in his claim for social security benefits. The Social Security Administration originally rejected the man's claim for disability because they reasoned that his severe alcoholism was a condition that he could control. However, legal services argued that his alcoholism was so severe that it was beyond his control. As evidence, they cited the fact that he drinks one-half gallon of wine a day, begins drinking in the morning, drinks all day and uses cocaine on occasion. As further evidence for getting SSDI, they said their client drinks whenever he has something important to do like visit a doctor -- or pick up his welfare check.

See *Dennis v. Sullivan*, 787 F. Supp. 89 (US Dist. Ct.) 1992.

### LSC Grantee Illegally Charges Clients to Handle SSDI Cases

Kansas Legal Services illegally charged 3400 indigent and handicapped clients up to \$100 an hour to handle their SSDI cases. The Legal Services Corporation Act, LSC regulations and every opinion of the LSC's own counsel over twenty years flatly prohibit LSC grantees charging fees. The practice has been going on for ten years and apparently continues despite the fact that KLS and its director Ruger McCollister were advised of its illegality. The Legal Services Corporation was made aware of the violation at a meeting of the LSC Board in September 1994 but none of the Board members took action to halt the practice.

See LSC Board Committee Transcript, September 17, 1994.

### Legal Services Represents Woman in Bogus Claim Case

Western Massachusetts Legal Services tried to get SSDI benefits for a woman who was clearly filing a baseless claim. Three doctors with the state welfare agency found that she could stand and walk normally and carry heavy loads. However, her personal doctor sent a report to the welfare agency stating that she would be "totally disabled" for 10 to 12 months and thus eligible for SSDI. The odd thing is that the same doctor had sent three previous reports showing no long-term disability. The Social Security Administration rejected the woman's claim because of the sharp discrepancy between the personal doctor's reports and the three state doctors. Western Massachusetts Legal Services sued the Department of Health and Human Services claiming that HHS should completely disregard the state doctors in favor of the claimant's doctor. A federal appeals court rejected the argument, saying that a personal doctor's opinion should not be given "controlling weight" when there are obvious inconsistencies in the record.

See *Shaw v. Secretary of HHS*, No. 93-2173 (US App. Ct.) 1994.

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LEGAL SERVICES  
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REPORT #13  
SEPTEMBER 25, 1995

## Legal Services and the Homeless

The federal legal services program exacerbates the problem of homelessness by requiring government to tolerate irresponsible conduct. Legal services maintains that the homeless have a constitutional right to panhandle anywhere and anyhow they see fit, to sleep on public sidewalks and even camp out on government property. To this end, they have sued cities, states and even private charities.

### Legal Aid Society Claims Begging Protected by Constitution

In 1990, the Legal Aid Society of New York City tried to overturn a law prohibiting begging on New York's subways on the grounds that begging is free expression protected by the First Amendment. The transit authority adopted the law in response to widespread complaints from the system's 3 million riders that they were tired of being harassed and intimidated by aggressive panhandlers who often resorted to "unwanted touching" and detainment to extort money. However, Legal Aid argued that prohibiting panhandling is unconstitutional because all panhandlers are trying to do is "communicate" a particular social or political message about their plight. The Second US Court of Appeals rejected this argument saying "that most individuals who beg are not doing so to convey any social or political message" and that "the only message we are able to spy as common to all acts of begging is that beggars want to exact money from those whom they accost."

See *Young v. New York City Transit Auth.*, 903 F.2d 146 (US App. Ct.) 1990

### Evergreen Legal Services Challenges Seattle Panhandling Law

In 1994, Evergreen Legal Services tried to overturn a Seattle ordinance prohibiting aggressive panhandling. It seems pedestrians were having to run a daily gauntlet of intimidation, derogatory remarks, and the residue of urine and alcohol while store owners were complaining of having to remove human waste from their doorsteps every morning. To address the problem, the city council passed several ordinances, one of which prohibited people from lying or sitting on public sidewalks between 7 am and 9 pm. The law's purpose was to eliminate the safety hazard the scores of beggars posed to pedestrians and to preserve the economic health of the commercial areas. Evergreen Legal Services claimed this was unconstitutional because it "chills and restricts" beggars' First Amendment rights to free expression. Evergreen tried to argue that the mere sight of unkempt beggars is constitutionally-protected conduct because it communicates a message about that person's need for assistance and society's failure to address that need. The court rejected the argument because it would mean that every public act of the homeless would have to be interpreted as protected expression.

See *Route 1 v. City of Seattle*, 850 F. Supp. 1442 (US Dist. Ct.) 1994

### Legal Services Says Homeless Have Right to Live on Public Property

This year, the California Supreme Court rejected legal services' attempt to require cities to allow the homeless to camp out on public property. The case resulted from a 1992 lawsuit filed by Orange County Legal Aid against the city of Santa Ana for preventing the homeless from living on public property. Hundreds of homeless had camped out on the city's Civic Center Plaza forcing government employees going to and from work each day to negotiate a maze of harassing beggars, rats, shopping carts, and grounds strewn with human waste. Citing the need to maintain public areas in a clean and accessible condition, Santa Ana banned camping on all public property. Orange County Legal Aid sued the city for violating the homeless' constitutional right to travel. They reasoned that prohibiting the use of public property for camping might mean the homeless would have to go somewhere else to live. The court rejected the argument because the purpose of the law was to forbid the unauthorized use of public property and could not in any way be unconstitutional because of an incidental impact on a person's right to travel. The court also ruled that an individual, homeless or not, does not have a fundamental right to camp on public property.

See *Tob v. City of Santa Ana*, 892 P.2d 1145 (Cal. Supr. Ct.) 1995

### Legal Services Sues Private Charity for Homeless

In 1992, Westchester Legal Services of New York sued a private charity for expelling an otherwise homeless man for not abiding by the charity's rules. Helping Out People Everywhere (HOPE) is a non-profit agency that provides for the homeless and other people with special needs. In 1991, HOPE admitted David Desch, an HIV-positive homeless man, into its program. He was provided a bedroom and required to abide by the rules of the counseling program which included having no overnight guests. However, Desch refused to abide by the "no overnight visitor" policy. HOPE moved to expel him at which point Westchester Legal Services intervened. They argued that Desch, as a homeless person, has a constitutional right to stay in the shelter of his choice for as long as he likes. A New York court rejected Westchester's argument.

See *Helping Out People Everywhere v. Desch*, 155 2d 707 (NY City Ct.) 1992

### Legal Services Claims Constitutional Right to Housing

In 1993, Legal Services of New Jersey sued the state, arguing that the state is obligated to provide "emergency" housing assistance for as long as the clients need it. New Jersey provides emergency housing assistance to low-income individuals for a minimum of 17 months during which time the recipients can seek long-term housing. Legal Services claimed that the state constitution's guarantee of the right to life and happiness includes a right to shelter which government is obligated to provide in perpetuity. The court rejected the claim saying that the guarantees of due process and equal protection have never meant a government obligation to finance social services.

See *L.T. v. N.J. Dept. of Human Services*, 264 N.J. Super. 334, 1993

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LEGAL SERVICES  
ACCOUNTABILITY  
PROJECT  
REPORT #14  
OCTOBER 4, 1995

## Legal Services Advocates Prisoner Rights

Even though the federal legal services program was intended to assist poor people in civil, non-criminal matters, legal services lawyers spend significant resources on behalf of criminals in prison. In addition to suing prisons for disciplining criminals guilty of planning riots, escapes and other offenses, legal services lawyers have also engaged in extensive litigation demanding special and unreasonable privileges for convicts.

### Defends Inmate Plotting Escape

In 1991, Florida Rural Legal Services sued a south Florida county jail because they placed an inmate planning an escape in solitary confinement. Not only was John Eric Chandler planning to escape individually, he was the ringleader of a large group of inmates who were plotting a mass-jailbreak. Authorities were informed of Chandler's plan and after an officer was attacked by an inmate in an aborted break, the jail administrator placed Chandler in solitary confinement for 16 days. The administrator took the action based on the confidential statements of inmates concerning Chandler's role and the fact that Chandler had drawn down his commissary account from \$50 to ten cents. However, Florida Rural Legal Services sued the jail claiming that they deprived Chandler of his right to due process because he was not informed of the charges when he was placed in confinement. The court rejected the argument and held that jails have every right to place inmates in solitary confinement without notice when such inmates pose a clear danger.

See *Chandler v. Bard*, 926 F.2d 1057 (US App. Ct.) 1991

### Sues Prison for Punishing Inmate Planning Riot

In 1994, Keystone Legal Services of Pennsylvania sued state prison officials because they sentenced an inmate to solitary confinement for planning a riot. The inmate in question, Cecil Cook, already had been punished for involvement in several fights when confidential informants informed prison authorities that Cook was planning a Thanksgiving Day riot. A hearing found Cook guilty of the charge and placed him in solitary confinement for 90 days. Keystone filed suit against the officials claiming that they violated his right to due process because the charges were too weak to substantiate punishment. However, the court rejected Keystone's arguments. The court observed that the hearing examiner had information from a reliable informant who gave very specific accounts of Cook's solicitation of inmates for the riot and the date, time and place of the event. Since the same informant had provided reliable information in the past, the hearing examiner had every reason to believe in the veracity of his claims. The court also took note of the statements of fellow inmates who said that it was a good move to lock up Cook.

See *Cook v. Lehman*, 863 F. Supp. 207 (US Dist. Ct.) 1994

### Evergreen Claims Delaying Parole for Inmate Unconstitutional

In 1989, Evergreen Legal Services sued state prison authorities because they extended an inmate's prison sentence after attempting to escape. Under Washington state law, a prisoner convicted of first-degree murder must serve 20 consecutive years before becoming eligible for parole. Because the prisoner, Gary Mayner, attempted an escape, they restarted his 20 years at the time of the escape attempt. Evergreen said that this violated Mayner's 5th amendment rights against double jeopardy because restarting his jail-time in determining parole eligibility punishes him twice for the same offense. The federal appeals court rejected the claim citing the fact that Washington state extends parole as a conditional privilege and has full power to determine the conditions of release. Evergreen also tried to argue that Mayner was deprived of equal protection of the laws. Because Mayner escaped relatively late in his mandatory minimum term, Evergreen reasoned that restarting his minimum is constitutionally unfair because he is punished more severely than prisoners who escape earlier in their term. The court rejected the argument.

See *Mayner v. Callahan*, 873 F.2d 1300 (US App. Ct.) 1989

### Legal Services Assert Prisoners Constitutional Right to Daily Visits

In 1992, the Legal Aid Society of Orange County California sued the county jail system claiming that the reduction of inmate's visitation rights from 4 to 2 days a week was "cruel and unusual punishment." Legal Aid argued that inmates have a constitutional right to daily visits. The court held that jails only have an obligation to set up "reasonable" visitation schedules and there was nothing unreasonable about the Orange County jail restricting visits to 2 days a week. The judge also noted that it is not the business of the courts to dictate how local authorities run their jail systems and the "court will not attempt to make policy choices that are the County's to make."

See *Benson v. County of Orange*, 788 F. Supp. 1123 (US Dist. Ct.) 1992

### Legal Aid Claims Prisoners Have Constitutional Right to Hot Pots

In 1990, the Legal Aid Bureau of Maryland sued the state correctional system because they restricted the amount of books and cooking utensils inmates could keep in their cells. The state adopted the property restrictions to limit clutter in cells, improve fire safety and reduce theft within the prison population. However, Legal Aid argued that limiting prisoners' books and papers to 1.5 cubic feet was unconstitutional because it interfered with their ability to work on post-conviction appeals and habeas corpus petitions. The court held that while the property rule may "somewhat hamper the convenience with which inmates may prepare legal challenges... the regulation does not infringe upon any constitutional rights." Legal Aid also argued that the prohibition of electric hot pots in prisoners' cells violated the 8th amendment's prohibition against cruel and unusual punishment. However, the court rejected the claim because the inmates only reason to have hot pots was convenience which the court observed is "not the standard by which Eighth Amendment violations are to be judged."

See *Savio v. Rollins*, 749 F. Supp. 1403 (US Dist. Ct.) 1990

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LEGAL SERVICES  
ACCOUNTABILITY  
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REPORT #15  
OCTOBER 11, 1995

## Legal Services Practices Economic Extortion

The federal legal services program engages in anti-free market litigation that imposes costly burdens on business and threatens basic constitutional rights. This is most apparent in legal services advocacy of laws that unfairly deprive individuals of the full use of their property.

### Assails Property Rights

In 1993, Evergreen Legal Services supported a law that forced owners of mobile home parks to pay the relocation costs of tenants. Washington state's Mobile Home Relocation Assistance Act required park owners to pay up to \$1000 per tenant to assist them in relocating to another park. The rationale of the law was to insure that low income persons would have access to affordable housing. However, park owners had to pay the expensive fees regardless of their tenants' income. Owners complained that the law unconstitutionally deprived them of the full use of their property because of the huge costs imposed upon them. The state supreme court rejected this argument but did find the law unconstitutional on other grounds. Because the law suddenly forced unsuspecting property owners to pay hundreds of thousands of additional dollars just to close their business, the court concluded the law to be unduly oppressive and violative of their 14th amendment rights to due process. The court also noted that it was unfair for government to place the burden of maintaining an adequate supply of low-income housing on a few property owners.

See *Guimont v. Clarke*, 121 Wash. 2d 586 (Wash. Sup. Ct.) 1993

### Evergreen Wins Battle Against Landlords

This year, Evergreen Legal Services succeeded in upholding a Seattle law that requires landlords to pay low-income tenants \$2000 in relocation expenses. The Tenant Relocation Assistance Ordinance (TRAO) makes landlords responsible for half of their tenants' relocation expenses if they must leave because of the landlords' decision to redevelop their property. The city pays the other half. Property owners complained that the law unconstitutionally deprived them of their 5th amendment property rights. By forcing them to pay each tenant \$2000, they contended that the ordinance illegally takes a portion of their property without just compensation. However, a federal district held that the ordinance does not violate landlords' property rights because they do not have "to submit to the physical occupation of any of their property."

See *Gernsau v. City of Seattle*, C94-914R (US Dist. Ct.) 1995

### Legal Services Opposed NationsBank Merger

Several LSC grantees participated in a campaign to stop the 1992 bank merger between North Carolina National Bank and C&S Sovran Corp. that created NationsBank. Working with a broad coalition of community activist groups, including the Association of Community Organizations for Reform Now (ACORN), legal services objected to the merger on the grounds that NCNB had neglected the needs of low-income individuals. Under the federal Community Reinvestment Act (CRA), groups such as legal services and ACORN can delay or even halt a banking merger if it is found that the bank has not invested enough money in poor communities. Legal services alleged that NCNB discriminated against blacks because the bank denied home ownership loans to blacks at a higher rate than whites. NCNB said that the denial rate is strictly due to the poorer credit history of blacks (Studies have shown that Asians have a higher acceptance rates than whites). To put an end to the activists' challenge to the merger, NCNB agreed to provide mortgages at one percentage point below the market rate and to allow ACORN a role in evaluating mortgage applicants. In addition, NCNB gave ACORN a \$125,000 grant. Despite all of that, the Atlanta Legal Aid Society still threatened to file a suit challenging the merger.

See "Study Shows Race Major Factor," PR Newswire, Nov. 7, 1991; "Consumers Bear Costs of Banking Regs." *Consumers' Research Magazine*, October 1992; "ACORN Won't Challenge NCNB Deal," *The American Banker*, Nov. 7 1991.

### Legal Aid Accused of Divisive Tactics in Banking Dispute

In 1992, Legal Aid of Western Missouri led the protest against a Missouri bank's attempt to do business in Kansas. Representing the Kansas City Regional Association for Community Economics (KC RACE), Legal Aid complained that Commerce Bancshares should not be allowed in Kansas because it didn't invest enough money in the low-income neighborhoods of Kansas City, Missouri. Eventually, Commerce agreed to Legal Aid's demands that it commit \$17 million in loans for poor neighborhoods and "donate" \$50,000 to the Black Chamber of Commerce as a condition for dropping its protest. Bank President Jonathan Kemper accused Legal Aid of being divisive and counterproductive throughout the whole process.

See "Battle on Urban Core Issues Fought on Kansas Prairie," *Kansas City Business Journal*, December 4 1992.

### Opposed Georgia Bank Merger

In 1988, Georgia Legal Services tried to prevent the merger of First Savannah and First Georgia. They claimed First Savannah had failed to meet the credit needs of low-income and minority residents even though the federal government had officially rated the bank's CRA performance as satisfactory. Nevertheless, Georgia Legal Services filed suit claiming that the merger be set aside until they get a hearing to challenge it. The court turned down the suit.

See *Washington v. Office of the Comptroller of the Currency*, 856 F.2d 1507 (US App. Ct.) 1988

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LEGAL SERVICES  
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REPORT #16  
OCTOBER 17, 1995

## Enemy of Welfare Reform

The federal legal services program is an implacable foe of welfare reform. From family caps to workfare, legal services groups have attacked virtually every major component of the reform agenda. About the only "innovative reform" legal services has shown any interest in is the expansion of welfare to cover criminals and drug addicts.

### Legal Services Challenges New Jersey Family Cap

This year, Legal Services of New Jersey failed in its attempt to overturn New Jersey's "Family Cap" provision. The "Family Cap" eliminates increases in AFDC payments for additional children born to a recipient. New Jersey implemented the cap to remove the perverse incentives for having illegitimate children. However, Legal Services argued that the cap unconstitutionally infringes upon a woman's private procreative choices. They believed that since a woman's right to reproduce is constitutionally protected then it is incumbent upon government to subsidize it. However, the court held that a woman's right to reproduce does not in any way entitle her to government financial assistance.

See *C.K. v. Shalala*, 883 F. Supp. 991 (US Dist. Ct.) 1995

### California's Work Incentive Program Attacked as Illegal Experimentation

In 1993, the Western Center on Law and Poverty, an LSC grantee, challenged California's work incentive program on the grounds that it violated federal laws against experimentation on human research subjects. The work program's goal was to encourage recipients to seek gainful employment by allowing them to earn more money while reducing benefit levels 1.3% to make welfare less attractive. Western Center lawyers argued that the work program was illegal because it was an experiment that posed a danger to the physical, mental or emotional well-being of the human participants and thus could only be implemented with their written consent. The court rejected the claim because the law against human experimentation was primarily designed to protect individuals involved in medical experiments. Reductions in the level of public assistance programs do not fall within the scope of that prohibition.

See *Beno v. Shalala*, 853 F. Supp. 1195 (US Dist. Ct.) 1993

### Wisconsin Program Attacked for Discouraging Migrant Recipients

In 1994, Legal Action of Wisconsin filed suit against the state for trying to discourage welfare recipients from migrating there to get higher benefits. Under Wisconsin's two-tier assistance system, new arrivals receive benefits equal to those in their home state for the first six months. Studies indicate that at least 30% of Wisconsin welfare recipients move to the state to get higher benefits. The state pays \$517 a month to a family of three which is considerably higher than neighboring states such as Illinois (\$377) and Indiana (\$288). Legal services says the cost-control program is unconstitutional because it prevents the poor from traveling freely.

See Rogers Worthington, "Study Finds Evidence Some View Wisconsin As a Welfare Magnet," *Chicago Tribune*, May 23, 1995, p.4

### Michigan Sued For Kicking Able-Bodied Adults Off Welfare

In 1991, several LSC grantees tried to prevent Michigan from removing more than 80,000 able-bodied adults from its welfare rolls. Under the General Assistance program, adults who were healthy and had no children received \$144 a month which was in addition to other welfare payments such as Food Stamps. Legal services claimed that the state violated recipients' due process rights under the state constitution by not giving them adequate notice of the impending changes. A state appeals court rejected the claim because they saw no reason to interpret the state constitution more broadly than the federal.

See *Saxon v. Department of Social Services*, 191 Mich. App. 689, 1991

### Massachusetts Group Seeks Disability for Felon Serving Sentence

Western Massachusetts Legal Services sought social security benefits for a convicted felon while he was still doing his time. Legal services claimed that the government owed Felix Calaf disability benefits for the last four months of his sentence because he spent it in a Home Electronic Monitoring Program. They reasoned that a home monitoring program — in which Calaf was hooked to an electronic tether — does not constitute confinement as defined in social security regulations. These regulations specifically prohibit assistance to individuals "confined in a jail, prison or other penal institution." The court rejected legal services claim because he was not on parole and thus legally confined.

See *Calaf v. Secretary of HHS* (US Dist. Ct.) 1994

### Legal Services Demands Disability for Habitual Criminal

In 1994, the Legal Assistance Foundation of Chicago sued the federal government demanding social security disability benefits for a man who admitted to making a living from crime. Legal Aid's client in the case, one Jimmie Jones, freely admitted that he robbed people and stole cars to support his \$60 dollar a day drug habit. Jones, who had been arrested more than 100 times in his life, also received welfare so that the money he earned from theft apparently went solely to support his drug habit. Nevertheless, Legal Assistance argued that even though Jones could support himself through illegal "gainful activity," he was still incapable of finding legal gainful employment. The judge in the case ruled that if Jones could make a living from a life of crime, he was certainly capable of earning a living from legal employment.

See *Jones v. Shalala*, 21 F.3d 191 (US App. Ct.) 1994

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LEGAL SERVICES  
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REPORT #17  
NOVEMBER 3, 1995

## Pennsylvania Pays Price for Legal Services Activism

The federally-funded legal services program has been an especially disruptive force in Pennsylvania over the last two decades. Legal services groups have drawn the ire of Governors, legislators and even federal judges for an array of highly questionable activities which include undermining prison safety and thwarting welfare reforms.

### Governor Thornburgh Blamed Legal Services for Hostage Crisis

In 1981, Governor Dick Thornburgh blamed Community Legal Services of Philadelphia for contributing to a dangerous hostage-taking incident at the Graterford federal penitentiary. The ringleader of the incident, convicted cop-killer Joseph Bowen, had been transferred to Graterford from Holmesburg state prison in 1973 for murdering the warden and deputy warden. As punishment for the murders, Bowen was placed in solitary confinement at Graterford. However, in 1975, Community Legal Services succeeded in having Bowen returned to the general population. The hostage incident resulted when Bowen and three other inmates failed in an escape attempt and held 38 people for five days. Governor Thornburgh declared that "Never again should government permit 'cause' groups...to place the purported rights of vicious criminals above the safety of law enforcement and correction officers."

See Jerry Flint, "Friends in Court," *Forbes*, December 21, 1981, p. 34.

### Never Again?

In 1994, Keystone Legal Services of Pennsylvania sued state prison officials because they sentenced an inmate to solitary confinement for planning a riot. Keystone filed suit against prison officials claiming that they violated Cecil Cook's right to due process because the charges were too weak to justify punishment. However, the court rejected Keystone's arguments because prison officials had information from a reliable informant who gave very specific accounts of Cook's plans. The court also took note of the statements of fellow inmates who said that it was a good move to lock up Cook.

See *Cook v. Lehman*, 863 F. Supp. 207 (US Dist. Ct.) 1994.

### State Sued For Kicking Able-Bodied Adults Off Welfare

In 1994, Community Legal Services sued the state for cutting off welfare benefits to single, able-bodied adults. Under the state's General Assistance program, adults between the ages of 18 and 65 received \$615 a year even if they had no children and were fit to work. Governor Casey sought to reduce the payments to \$205 a year to achieve an estimated \$110 million in critically-needed budget savings. In the end, the state agreed to reduce the cutback but did succeed in removing 14,000 from the rolls. Those under 45 are expected to work unless they are mentally or physically disabled. However, the state Labor and Industry Secretary complained that Community Legal Services encouraged recipients who had applied for job training to drop out so they could appeal the revocation of their welfare.

See Frank Reeves, "States Reduce Welfare Cutback," *Pittsburgh Post-Gazette*, Sept. 22, 1994, p. A1; and Hank Grezlak, "CLS Files Class Action," *The Legal Intelligencer*, Aug. 4, 1994, pg. 1.

### Legal Services Challenges Welfare Residency Requirement

Neighborhood Legal Services sued the state because it imposed a 60-day residency requirement for receiving General Assistance benefits. Previously, anyone could move to Pennsylvania and immediately be eligible for General Assistance. Pennsylvania lawmakers have long been concerned that the state's high welfare benefits make it a haven for recipients from neighboring states. A 60-day residency requirement would force newcomers to live without any welfare for that period. Neighborhood Legal Services contends that such restrictions are unconstitutional.

See Mike Buscko, "Suit Challenges Residency Portion of Welfare Reform," *Pittsburgh Post-Gazette*, Sept. 28, 1994, pg. C5.

### State Sued for Trying to Control Soaring Medical Costs

In 1993, Community Legal Services sued the state for attempting to rein in soaring medical assistance costs. At that time, the state's Medicaid program consumed 15 percent of the state budget with costs increasing up to 20% annually. In an effort to cut \$40 million from the \$2.3 billion medical assistance budget, the state tried to save the program by scaling back services such as routine dental care. Emergency procedures would still be subsidized. In a court settlement, the Casey Administration agreed to restore some of the cuts, including routine dental care.

See Tim Reeves, "State Poor to Get Back Health Care Benefits," *Pittsburgh Post-Gazette*, June 11, 1993, pg. B1.

### Federal Judge Sanctions Legal Services Lawyer for Unethical Tactics

In 1992, a federal judge formally sanctioned a lawyer with Delaware County Legal Assistance for using unethical legal tactics in delaying the eviction of problem tenants from non-profit housing. For more than two years, Delaware County repeatedly prevented Flower Manor, a private non-profit group dedicated to providing low-income housing, from evicting tenants who refused to pay rent. Flower Manor complained that "It is unfair for an attorney who is paid with federal funds to intentionally delay and manipulate in order to force" them to cave in to his unreasonable demands. Federal District Court Judge Ronald Buckwalter agreed. He sanctioned Roger Ashodun of Delaware County Legal Assistance for engaging in legal tactics whose only purpose was to needlessly increase the cost of litigation.

See *Cottman v. Flower Manor*, Civil Action No. 91-4890 (US Dist. Ct.) 1992.

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LEGAL SERVICES  
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REPORT #18  
NOVEMBER 17, 1995

## Legal Services Wrecks Havoc in Florida

Both business and government in Florida suffer significantly from legal services litigation. The agriculture industry is losing thousands of jobs to costly litigation. Local governments spend millions resisting everything from challenges to their electoral systems to how they deal with the homeless. Currently, legal services is fighting the state's efforts to cut off benefits to illegal immigrants.

### Legal Services Litigates Away Thousands of Farm Labor Jobs

After two decades of litigation, legal services has succeeded in destroying nearly 10,000 jobs in Florida's sugar cane industry. As recently as 1988, more than 10,000 Jamaican guest workers would migrate to Florida to cut sugar cane as part of a special government program to bring in essential foreign workers. These workers were given free housing, free transportation to and from Jamaica, health care and guaranteed wages of nearly \$7 an hour. Yet, each year, Florida Rural Legal Services would haul sugar growers into court alleging a myriad of labor violations. A series of suits culminating in a \$51 million judgment handed down in 1992 forced the growers to switch to mechanization. In 1993, only 2100 workers were employed in the harvest. When warned four years ago that the companies might tire of the ceaseless litigation and switch to mechanical harvesting, a legal services lawyer said it was a bluff and that they would eventually negotiate.

See Jon Jefferson, "Cane Workers Accord Means Big Job Loss," *The National Law Journal*, November 8, 1993, pg. 9; Rosalind Kesznic, "Sugar Companies and Cane Cutters Battle in Florida," *The National Law Journal*, April 1, 1992, pg. 1

### Florida Cities Harassed Over Electoral Voting Systems

Since 1990, Florida Rural Legal Services has sued eight local governments demanding that they abandon their at-large electoral systems for single-member districts on the grounds that at-large voting unfairly dilutes black voting strength. County and city governments, including DeSoto County, Hendry County and the cities of Arcadia, FL Pierce and West Palm Beach, have spent hundreds of thousands of dollars fighting what they regard as unfair allegations that they deliberately weaken black voting strength. The city of Arcadia, for instance, has had to spend more than \$100,000 fending off a FRLS lawsuit even though two of the city's five council members are black. DeSoto County officials, who have accrued more than \$100,000 in legal bills, complain that FRLS wants them to count minorities in prisons and mental hospitals in assessing the number of minorities eligible for representation.

See Ian Trontz, "Voting Rights Suits Cost over \$300,000," *The Tampa Tribune*, June 2, 1995, pg. 1; Bill Douthat, "Voting Rights Pioneer," *The Palm Beach Post*, April 3, 1994, pg. 18

### Jail Sued for Trying to Prevent Spread of AIDS

In 1994, Greater Orlando Area Legal Services (GOALS) forced the Orange County Jail in Orlando to stop segregating AIDS-infected inmates from the general population. The jail started the policy in 1989 to protect other inmates and employees from possible infection. Immediately, GOALS filed a lawsuit which dragged on for nearly five years. Legal services lawyers contended that the jail was denying inmates counseling and medical treatment. Ed Royal, deputy corrections director, called the charge "a bunch of bunk" and said the jail consistently provided treatment and medication. The Center for Disease Control estimates that 5000 prisoners per year contract the AIDS virus.

See Jim Leusner, "Jail Will Stop Segregating AIDS Inmates," *The Orlando Sentinel*, Sept. 30, 1994, pg. C1

### Fort Lauderdale Sued For Housing Homeless in Tent Camp

The Legal Aid Service of Broward County is currently suing the city of Fort Lauderdale for housing the homeless in a tent camp. City officials constructed the camp to get the homeless out of public parks where there had been many complaints about them urinating and defecating in public. The camp, which houses about 300 people, provides three large open air tents, cots, running water, toilets and 3-by-7 foot sleeping spaces. The camp is also regularly inspected by health authorities. Nevertheless, Legal Aid says the facility is inadequate. They claim the camp violates the homeless' constitutional right to privacy and subjects them to cruel and unusual punishment. Legal Aid demands that the city either build a better facility or let the homeless roam freely as they did before.

See Teo Woolfe, "Legal Aid Suit Blasts Homeless Site," *Sun-Sentinel*, March 31, 1994, pg. 18

### Legal Services Demands Foster Care for Illegal Immigrants

Legal Services of Greater Miami is suing the state for refusing to admit illegal immigrant children into the state foster care system. The state took the step after Governor Chiles announced that Florida is under no obligation to subsidize services for illegal immigrants and would sue the federal government to recoup the money it has spent to date. Currently, Florida spends \$739 million a year on immigrants.

See Larry Kohler, "Florida Opens New Front in Fight on Immigrant Policy," *The New York Times*, February 11, 1994, pg. 44

### Orange County Schools Sued for Expelling Violent Students

In 1992, Greater Orlando Area Legal Services sued Orange County Schools on behalf of several students expelled for violent behavior. Legal services claims that the students have behavioral problems and it is the obligation of the school district to provide them with special education programs. One of the students GOALS wanted readmitted was expelled for breaking another student's arm and nose. The suit was dismissed on procedural grounds, but not until Orange County had modified its expulsion policy to take into account "special needs" children.

See Sandra Fish, "Suit Challenges Expulsion Policy," *Orlando Sentinel Tribune*, April 27, 1992, pg. B1

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## California's Legal Services Woes

LEGAL SERVICES  
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REPORT #19  
DECEMBER 4, 1995

California grantees of the Legal Services Corporation have inflicted significant harm on the state. They have thwarted welfare reforms, overturned laws against abusive panhandlers, kept able-bodied men on welfare and allowed illegal aliens access to government services. The cost of this and other activism to Californians in both money and quality of life has been high.

### Lawmakers Outraged at Legal Services Subversion of Welfare Reforms

Last year, Governor Pete Wilson and state legislators expressed their outrage over legal services repeated efforts to overturn the state's ambitious welfare reforms. Under the state's "carrot and stick" approach, recipients had their AFDC benefits cut 15% to make welfare less attractive but allowed to earn more money to ease their way to self-sufficiency. However, the Western Center on Law and Poverty succeeded in overturning one-third of the cuts, claiming that the reforms imposed undue hardships on the poor. Besides forcing the state to spend an extra \$130 million a year, the increased expenditures seriously dilute the state's attempts to remove the perverse incentives to welfare dependency. Governor Wilson said of the Western Center that "It is outrageous that this self-appointed band of 'welfare advocates' can substitute its distorted view of welfare reform" for the policy of the "duly-elected state legislature."

See K.L. Billingsley, "Welfare Legal Eagles Fly High," *The Washington Times*, September 6, 1994, pg. A1

### Counties Soed for Trying to Keep Employable Adults Off Welfare

Over the last four years, legal services lawyers have halted the attempts of several county governments to reduce welfare benefits for healthy, adult men eligible to work. Many counties faced with tight budgets have sought to restrict benefits to this least deserving category of recipients only to have legal services thwart their efforts. In 1991, for instance, the Legal Aid Foundation of Los Angeles forced Los Angeles County to increase General Assistance monthly benefits from \$312 to \$341. In 1992, the Legal Aid Society of San Diego prevented San Diego County from limiting adult men to 3 months of assistance per year forcing the county to spend \$6 million. In 1993, the Legal Aid Society of Alameda County stopped that county from imposing a similar three month restriction for 7000 employable adults at a cost of \$15 million. However, this year Sacramento County did win the right, over the vigorous objections of legal services lawyers, to reduce the monthly benefits for employable recipients from \$286 to \$221.

See Ronald Taylor, "County Ready to Enact Hike," *Los Angeles Times*, June 11, 1991, pg. 3 (For further background, contact NLI/C)

### Legal Services Attacks Crackdown On Welfare Fraud

Legal services groups have attacked an innovative welfare anti-fraud program even though it has saved millions of dollars. Several California counties, following the lead of Los Angeles County, now fingerprint welfare recipients to prevent potential abusers from signing up more than once for benefits. However, when Los Angeles County announced that it saved \$4.5 million in one month with a potential savings of \$116 million over two years, the only comment of the Legal Aid Foundation of Los Angeles was "why we are so self-congratulatory" about saving money. When Sacramento County announced that it would start fingerprinting, a lawyer with Legal Services of Northern California said it was unfair because it would deter those with outstanding warrants and arrest records from applying. A survey of welfare recipients showed that 95% supported the program because it would make welfare more credible.

See Leslie Berger, "Savings Seen in Welfare Fingerprint Program," *Los Angeles Times*, October 15, 1994, pg. B1; Maria Camposco, "New Welfare Anti-Fraud Effort Comes Under Fire," *Sacramento Bee*, Dec. 26, 1994, pg. B1

### Homeless Go On \$400,000 Drug and Drinking Binge

In 1991, the Legal Aid Society of Orange County won \$400,000 from the city of Santa Ana for more than 30 homeless persons as compensation for supposed suffering they experienced when police forcibly removed them from the grounds of the city civic center. Despite the fact that the vast majority of the homeless plaintiffs were drug addicts and alcoholics, the settlement Legal Aid lawyers worked out simply gave each homeless person \$11,000 without any requirements that they get counseling for their maladies. The predictable result was a wild binge of drunkenness, drug use and outlandish squandering of money. One homeless person said he used his money to treat his friends to a night on the town in a limo and looking for all the drugs his money could buy. Another also admitted to "cruisin" in a luxury car with friends and getting drunk. One man who fared better than the rest said he found a nice apartment with a jacuzzi but says that he still drinks and has no intention of getting a job. Within months, of the 31 homeless plaintiffs who received damage awards, 11 were homeless again, several were running out of money and some had simply disappeared. Only 9 were legitimately trying to turn their lives around. All Legal Aid lawyers had to say was that the homeless were entitled to use the money as they saw fit.

See Gebe Martinez, "Money Didn't Buy Them Happiness," *Los Angeles Times*, Dec. 2, 1991, pg. A1

### Legal Aid Calls Cuts in Medical Assistance for Aliens Racist

In 1993, the Legal Aid Society of San Diego criticized San Diego County for cutting off emergency care benefits to illegal aliens. The county took the action when it discovered that \$5.2 million of a \$10.8 million emergency care program for the uninsured was going to illegal immigrants. County authorities say that they can not provide such care when services are already limited for legal residents. Legal Aid said the cuts were racially motivated.

See Rea Dalton, "County to Halt Medical Funds for Migrants," *The San Diego Union-Tribune*, November 8, 1993, pg. B1

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LEGAL SERVICES  
ACCOUNTABILITY  
PROJECT  
REPORT #20  
DECEMBER 11, 1995

## California's Legal Services Woes II

California legal services groups that receive funding from the Legal Services Corporation continue to engage in highly questionable and costly litigation. This includes opposition to mandatory drug rehabilitation for welfare recipients, INS roundups of illegal aliens and even a number of sensible education reforms.

### Legal Services Promotes Irresponsibility by Homeless

In the last four years, California cities and businesses have been repeatedly sued by legal services lawyers for trying to control problems associated with the homeless. For example, Legal Services of Northern California sued Sacramento for prohibiting the homeless from camping out in public and threatened yet another suit for prohibiting panhandlers from harassing people. The San Francisco Neighborhood Legal Assistance Foundation attacked as a threat to privacy a proposal that homeless applicants for social services be screened for criminal warrants. The cities of Oakland and El Cajon had to pay \$13,000 and \$40,000 respectively for allegedly destroying the property of the homeless when they expelled them from illegal campsites. In Orange County, Viva Supermarkets had to pay \$25,000 to a community activist group as a condition for stopping a legal services lawsuit. Legal Aid of Orange County had threatened to sue Viva for allegedly destroying the homeless' personal property while repossessing shopping carts they had stolen from their stores.

See Larry Hicks, "Panhandle Lawsuits Expected," *Sacramento Bee*, Dec. 2, 1993, pg. B1 (For further background, contact NLPC)

### Legal Services Contributes to Medi-Cal Fraud

Thanks in part to legal services, thousands of Mexicans illegally cross the border each year to fraudulently get free medical care at taxpayer expense under the Medicaid program. Medical professionals and social workers complain that such undocumented immigrants often get more services than are available to legal residents. Investigators with Medi-Cal, California's Medicaid program, say that whenever they are stationed at the border they catch at least five people per day illegally trying to get Medi-Cal services. They estimate that close border monitoring would save taxpayers \$3 million per year. However, the Legal Aid Society of San Diego has hampered such daily inspections because it would deter undocumented immigrants from seeking Medi-Cal.

See Gayle Hanson, "Illegal Aliens Strain an Ailing U.S. System," *The Washington Times*, April 12, 1994, pg. A5; *San Diego Union Tribune*, April 15, 1993

### Legal Aid Attacks Mandatory Treatment for Addicts on Welfare

In 1993, the Legal Aid Foundation of Los Angeles threatened to sue Los Angeles County for requiring welfare recipients who are substance abusers to enter treatment programs. The county took the step because welfare recipients who were addicts or alcoholics were not volunteering for rehabilitation. In addition, the county had received many complaints about recipients using their checks to buy drugs and alcohol. Under the program, individuals who are determined by a physician to be abusers are required to attend a three month treatment program at county facilities and can not receive further welfare checks until they complete the program. Legal Aid argued that forced rehabilitation discriminates against people with disabilities.

See Somini Sengupta, "Drug Rehab Required of Some Recipients," *Los Angeles Times*, March 8, 1993, pg. B1

### Legal Aid Tries to Derail Innovative School Reform

In 1993, the Legal Aid Foundation of Los Angeles tried to halt the implementation of an innovative school reform designed to improve academic performance. Four public schools within the Los Angeles Unified School District received permission to transform their schools into Charter Schools, a reform in which parents, teachers, and administrators are free to design their own curricula, graduation requirements and teaching methods. The curricula designed by the schools included a humanities program for high schoolers based on Ancient Greek literature and philosophy, a curricula for at-risk elementary children emphasizing special tutoring and a curricula maximizing parental involvement. Although the Charter Schools are designed to especially attract students from minority groups, Legal Aid in conjunction with various civil rights groups tried to scuttle the plan, claiming it would discriminate against minorities. However, many minority parents supported the plan. One Latina parent said "the charter plan is the possibility of a better education for our children, Latino and African-American... Why say no?"

See Lois Turnick, "Schools Will Start With a Clean Slate," *Los Angeles Times*, July 3, 1993, pg. B13

### INS Sued for Rounding Up Illegal Aliens

In 1992, the Immigration and Naturalization Service agreed to settle a seven-year legal services lawsuit by restricting its ability to arrest illegal immigrants. California Rural Legal Assistance sued the INS over a 1984 raid in which 200 INS agents and police officers sealed off several streets and bars in the town of Sanger, detaining hundreds of people suspected of being illegal aliens. The raid resulted in 250 deportations. However, CRLA successfully argued that because some of the people detained were American citizens, the INS violated their constitutional rights. Although, the agreement allows INS to conduct similar raids without police officers involved, experts believed it would lead to further restrictions on INS's ability to arrest illegal immigrants.

See "Court Curbs INS Power to Round Up Migrants," *San Diego Union-Tribune*, February 1, 1992, pg. A21

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LEGAL SERVICES  
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REPORT #21  
JANUARY 5, 1996

## Legal Services Saddles California With Illegal Immigration

The federal legal services program is a major reason why California must spend billions of dollars caring for 2 million illegal immigrants. Currently, legal services groups are leading the effort to stop the implementation of Proposition 187 which bans government assistance for illegal immigrants.

### Legal Services Leading Charge Against Prop 187

True to their word, several of California's LSC grantees have initiated lawsuits to overturn Proposition 187's ban on most government services for illegal aliens. In an opening round, California Rural Legal Assistance persuaded a state court to bar the enforcement of a ban on public higher education for undocumented immigrants. Currently, there are 14,000 illegal immigrants enrolled in the state's community colleges in addition to 500 enrolled at California State University campuses and 125 at the University of California. CRLA is also involved in a federal suit seeking to overturn the provision denying Medicaid and welfare to illegal immigrants. Joining CRLA in this suit is the Legal Aid Society of San Mateo, the National Immigration Law Center and the San Francisco Neighborhood Legal Assistance Foundation.

See Hannah Nordhaus, "No Quiet Fronts in This War," *The Recorder*, November 10, 1994, pg.2; "Prop. 187 Ban on Higher Education Barred," *Los Angeles Times*, February 9, 1995, A3

### Schools Can't Request Documents

California Rural Legal Assistance forced a San Diego-area school district to stop requesting immigration forms to determine if students are legal residents of the district. While federal law prohibits schools from inquiring about citizenship status, state law mandates that districts verify that students are legal residents of the district. San Diego-area districts are especially concerned about students illegally attending their schools after it was discovered last year that Mexican nationals residing in Mexico crossed the border to attend US schools. Officials of the Escondido Union High School District said they requested the immigration forms only as a way to verify that the students were in fact residing in their districts. CRLA said such requests for documentation would scare away children of immigrants.

See Lisa Petrillo, "Escondido Schools to Stop Using INS Forms," *The San Diego Union-Tribune*, September 30, 1995, pg. B1

### Questions Computer Screening of Applicants For Work Eligibility

The National Immigration Law Center criticized an innovative computer system that employers can use to instantly verify the citizenship status of job applicants. GT Bicycles of Santa Ana, one of 231 businesses participating in a pilot program, used the Verification Information System to identify 185 ineligible workers from 1000 applicants over a two month period. The VIS appears to counter the easy ability of illegal immigrants to use fake documents to get jobs. However, the National Immigration Law Center says it is concerned that it will be used to discriminate against applicants who look foreign.

See Leslie Earnest, "They're On-Line With INS," *Los Angeles Times*, December 4, 1995, pg. D1

### Supports Automatic Citizenship for Children of Illegal Aliens

The National Immigration Law Center is attacking a proposed constitutional amendment to end automatic citizenship for the offspring of illegal immigrants. Under current citizenship laws, children born to illegal aliens in the U.S. are automatic citizens and entitled to costly federal assistance such as Aid to Families with Dependent Children and Medicaid. In 1992, 96,000 babies born to undocumented women in California were covered by the state's Medicaid program at a cost of more than \$230 million. The National Immigration Law Center said the proposed amendment violates illegal aliens' 14th amendment rights.

See Marc Lacey, "Move to Limit Citizenship Gains Support," *Los Angeles Times*, June 11, 1995, pg. A1

### Attack Effort to Crack Down on Illegal Aliens Living in Public Housing

In 1992, California Rural Legal Assistance attacked a proposed congressional law to prohibit illegal aliens from living in public housing. California Congressman Elton Gallegly's bill called for public housing agencies to annually inspect all federally-funded units to determine if illegal immigrants were living in them. Gallegly felt his bill was necessary because federal housing officials were not adequately enforcing the prohibition. CRLA said it was just an attempt "to whip up anti-immigrant fear."

See Carlos v. Lozano, "Gallegly Proposal Prompts Charges of Racial Politicking," *Los Angeles Times*, September 19, 1992, pg. B1

### Chaos At the Border

In 1991, California Rural Legal Assistance criticized the California State Department of Transportation for building a fence in the median of Interstate 5 south of San Diego to prevent hundreds of illegal aliens from running across the freeway to avoid an INS checkpoint. Between 1985 and 1991, 112 illegal aliens had been killed running back and forth across the interstate to avoid the checkpoint. It seems they would jump out of smugglers' vehicles, dart across eight lanes of freeway, walk north past the checkpoint and then run back across the eight-lane road to be picked up by the waiting smugglers. CRLA did not want a fence in the median, claiming that would not solve the problem. INS officials had tried other alternatives including prayer cards distributed throughout Mexico warning potential illegal entrants to stay off the highways. CRLA preferred that a highway safety video be shown in the Tijuana, Mexico bus station where many illegal aliens congregate before heading for the border.

See Seth Mydans, "One Last Deadly Crossing for Illegal Aliens," *The New York Times*, January 7, 1991, pg. A1

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LEGAL SERVICES  
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PROJECT  
REPORT #22  
JANUARY 17, 1996

## California Under Assault - Continued

NLPC's extensive investigation of the judicial antics of California legal services groups funded by the federal Legal Services Corporation yields numerous examples of abuse.

### Welfare Residency Requirement Scuttled

In 1993, the Legal Aid Society of San Mateo was one of three groups that stopped California from enforcing a law that lowers welfare benefits for newcomers to the state. The residency requirement, enacted into law in December 1992, mandated that people who had lived in the state less than 12 months could not receive AFDC payments in excess of the payments they would have received in their previous state. Governor Wilson and the state legislature sought the measure to discourage individuals from migrating to the state in order to receive generous welfare. California has the second highest welfare benefits in the nation. The state estimated that the residency requirement would have saved the state \$10 million in the first year. However, the Legal Aid Society of San Mateo, the American Civil Liberties Union and a welfare rights group persuaded a federal judge to strike down the measure on the grounds that it violated the poor's constitutional right to travel.

See Valerie Richardson, "California Cost-Cutter Hammered by U.S. Court," *The Washington Times*, January 30, 1993, pg. A4

### School District's Uniform Policy Sued by Legal Services Group

The Legal Aid Foundation of Long Beach and the American Civil Liberties Union are suing Long Beach public schools for requiring students to wear uniforms. Long Beach adopted the policy for the 1994-1995 school year in response to parental concerns about their children being attacked for inadvertently wearing gang paraphernalia. The uniform code has been tremendously successful according to school administrators and academic researchers. Fighting has dropped 51%; drug cases are down 69%; sex offenses down 74%. Parents and officials cite a number of reasons for the uniform code's salutary effect including reducing the differences between ethnic groups and between rich and poor. The overwhelming majority of parents and even students support the code. Attorney General Janet Reno recently visited the district praising the uniform code's impact. However, all Legal Aid could do was file a lawsuit complaining that it imposes a monetary hardship on poor families. This ignored the fact that the school district goes out of its way to provide uniforms.

See Kathryn Wexler, "Sizing Up A Uniform Answer," *The Washington Post*, November 8, 1995, pg. A3

### CRLA Overturns Governor's Line-Item Veto

In 1990, California Rural Legal Assistance prevented Governor Deukmejian from cutting \$24 million in funds for family planning clinics which provided a range of medical services to poor women including abortions. Governor Deukmejian used his line-item veto to cut the funds as part of his overall effort to control spending. However, California Rural Legal Assistance claimed the cuts illegally deprived health care to poor women. The Governor gave up and allowed the money to be appropriated after CRLA tied up the proposed cuts in lengthy litigation. The state complained that CRLA's actions were an unconstitutional intrusion upon the authority of the Governor and the legislature.

See Philip Hager, "State Fights Order to Restore Clinic Funds," *Los Angeles Times*, January 6, 1990, pg. A30; Miles Corwin, "Firm that Heals Governor May Lose Funds," *Los Angeles Times*, pg. A3

### Beggars Can Be Choosers

In 1992, Legal Aid of Marin won a court ruling which required the Marin county government to allow homeless people who refused to live in a county-run shelter to live on the grounds of a civic center. The county and other organizations spent \$650,000 to set up a winter shelter on the campus of World College West which would provide counseling and mental health services. However, that was not good enough for many homeless people because it had "a lot of rules to control people." Legal Aid said they would seek an even broader ruling that would allow the homeless legal access to public property.

See Diane Curtis, "Marin Homeless Go to Court," *The San Francisco Chronicle*, November 20, 1992, pg. A25

### Legal Services Harasses Homeless Shelter

The Legal Aid Foundation of Long Beach lent its assistance to a group of homeless activists who were harassing a homeless shelter because they thought its rules too strict. In exchange for housing and food, the Family Shelter for the Homeless of Long Beach required that individuals adhere to a strict routine such as performing chores, showing up for meals on time and spending three hours a day seeking employment. A recently formed group of homeless activists complained to Legal Aid about the "oppressive" rules which responded by demanding an accounting of the shelter's funding. The shelter's director said all they were trying to do was help the homeless "restore structure to their unstructured lives."

See Faye Fiore, "Homeless Say Shelter's Rules Are Too Strict," *Los Angeles Times*, January 25, 1990, pg. J1

### Long Beach City Councilmen Sued for Sending Letter

In 1994, the Legal Aid Foundation of Long Beach sued five Long Beach city council members for sending a letter to the federal government stating their opposition to turning a navy complex into housing for the homeless. Legal Aid said the councilmen violated an open-meeting law. One councilman called it "absurd." "Take this to its logical conclusion," he said, "and you'll see that council members couldn't even sign a birthday card without breaking the law."

See Emily Adams, "Long Beach Judge Rules Council Violated Hmwn Act," *Los Angeles Times*, July 7, 1994, pg. J2

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LEGAL SERVICES  
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REPORT #23  
FEBRUARY 1, 1996

## Legal Services Costs Tennessee

The federally-funded legal services program has cost Tennessee hundreds of millions of dollars litigating everything from how the state delivers health care to how it runs its prisons. In addition, legal services lawyers show questionable ethical judgment in using federal dollars to represent individuals clearly undeserving of taxpayer-provided legal assistance.

### Doctors Say Legal Services Trying To Run Them Out of Business

In 1994, Legal Services of Middle Tennessee outraged the state's doctors by advocating a rule that would have required them to see unlimited numbers of Medicaid patients. The Tennessee Medical Association (TMA) said that payments under TennCare, as the state Medicaid program called, are so low that doctors have no choice but to restrict the TennCare patients in their care. Legal services claimed that this was discrimination and should be prohibited. The TMA warned that the rule would drive so many doctors out of business that the state would truly have a problem with access to quality health care. In response to the outcry, Governor Don Sundquist halted implementation of the rule.

See Richard Locker, "Physicians Protest Change in TennCare Regs," *The Commercial Appeal*, October 18, 1994, pg. 2B; "Administration Kills TennCare Anti-Discrimination Rule," *Health Line*, March 3, 1995

### Legal Services Prison Suit Costs State \$340 Million

In 1993, Tennessee regained control of its prison system from the federal government but only after spending \$340 million to satisfy a legal services lawsuit. In 1982, Legal Services of Middle Tennessee sued the state claiming overcrowding and lack of proper health care violated the constitutional rights of prisoners. A federal judge agreed and ordered federal oversight until the conditions were remedied. The state spent nine years building six new prisons and expanding others to get out from under the order.

See "Federal Judge Returns Control of Tennessee Prisons to State," *Associated Press Wire Story*, May 14, 1993

### County Jail Facing \$2 Million Fine

Legal services lawyers are asking a federal judge to impose as much as \$2 million in fines on the Franklin County jail for what they claim is overcrowding of inmates. In 1990, the jail entered into an agreement with Legal Services of South Central Tennessee capping the jail population to end a series of lawsuits. However, legal services claims that there are still too many inmates. In addition, they say prisoners do not have enough exercise time and visitation rights. However, the county refuses to spend \$5.3 million to build a jail that would satisfy legal services standards.

See Charlie Appleton, "Jail Expects to be Fined for Crowding," *The Nashville Banner*, October 27, 1995, pg. B1

### Tries to Overturn Parole Deferral of Violent Prisoner

In 1990, Legal Services of South Central Tennessee sued the state for delaying the parole of a violent inmate. The inmate in question was found guilty by a disciplinary committee for assaulting a guard and as punishment postponed the inmate's eligibility for parole from 2002 to 2014. Although state law clearly gives prison officials broad authority to adjust inmate sentences within the full sentence originally imposed, legal services tried to argue that authorities violated their plaintiff's rights for vague bureaucratic reasons. A state appeals court dismissed the suit as groundless.

See *Green v. Reynolds*, Tenn. App. Ct., 1992

### Defends Mother With Abusive Past in Custody Case

In 1991, the Knoxville Legal Aid Society represented a woman in her attempt to regain custody of her five-year old son even though she had been convicted for not only abusing him but for complicity in the death of her daughter. In 1987, the Department of Health and Human Services obtained temporary custody of then-18 month old Christopher Tucker and 7-month old Ashley Nicole Tucker after corroborating claims of serious child abuse. Both children were immediately hospitalized with severe injuries. Christopher sustained multiple bruises, scratches, bites and a cigarette burn. Ashley died of her injuries. Tucker's boyfriend, Steve Hannah, plead guilty to involuntary manslaughter and went to prison. Mary Tucker Rose, the mother, plead guilty to aggravated assault and served 12 days of a two-year prison sentence with the remainder on probation. Despite her conviction and the recommendations of experts that Christopher not be returned to her custody, Legal Aid insisted that there was not "clear and convincing" evidence of abuse to terminate her parental rights. A state appeals court disagreed noting that she continued to be less than truthful about her prior mistreatment of Christopher.

See *Simpson v. Rose*, Tenn. App. Ct., 1991

### Defends Man Accused of Sexual Abuse in Custody Case

In a 1990 child custody case, Legal Services of South Central Tennessee tried to prevent consideration of evidence that their client had sexually abused the child in contention. The state had removed three children from their grandmother, Beulah Mattox, and their step-grandfather, Villard Mattox, after determining that they were physically abused and neglected. After being placed in foster care, one child said that Villard had sexually abused her. The state then sought a new order to prevent the couple from regaining custody. Legal services lawyers tried a variety of legal procedural tactics to have the state's petition dismissed. However, an appeals court ruled for the state.

See *State of Tennessee Department of Human Services v. Villard Mattox*, Tenn. App. Ct., 1990

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LEGAL SERVICES  
ACCOUNTABILITY  
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REPORT #24  
FEBRUARY 14, 1996

## Legal Services Abuses in Kentucky

Kentucky grantees of the federally-funded Legal Services Corporation have attacked parental rights, filed costly prison litigation cases and lawsuits demanding a radical expansion in welfare entitlements.

### Jail Forced to Release Thousands of Criminals

Between 1986 and 1992, the Jefferson County Jail was forced to release more than 15,000 prisoners as a result of a legal services lawsuit alleging jail overcrowding. Initially, authorities tried to release only the most non-violent of offenders. Unsatisfied with their efforts, however, the Louisville Legal Aid Society forced the jail to prematurely release criminals guilty of more serious offenses including drug possession and burglary. For instance, one prisoner released before completing her full sentence had a lengthy record which included cocaine possession, resisting arrest, and receiving stolen property. Another freed inmate had burglary and disorderly conduct convictions to his credit. One of the tactics legal aid used to expedite prisoner releases was to demand that the county pay inmates \$25 each day they lived in overcrowded conditions. Legal Aid's suit also contributed to a large increase in the County's Corrections budget which rose from \$6.5 million a year in 1980 to \$19 million in 1991.

See Kay Stewart, "154 Are Released to End Crowding," *The Courier-Journal*, Jan. 24, 1992, pg. 1B; Kay Stewart, "New Limit On Inmate," *The Courier-Journal*, Dec. 25, 1991, pg. 1A.

### Legal Aid Assaults Parental Rights

In 1993, the US Supreme Court put an end to Kentucky Legal Aid Society's 11-year fight to deprive parents of the right to determine what is best for their mentally-retarded children. The litigation began in 1982 when Legal Aid challenged the placement of a retarded man in an institution without a court hearing. This resulted in a lower court decision which held that parents had to get the permission of a judge before they could place a profoundly retarded son or daughter in an institution. Legal Aid lawyers argued that the rights of retarded adults are better served by lawyers such as themselves rather than family. This resulted in one case where the parents of a girl had to appear in court 20 times over a four year period just to get the court's approval for placing her in an institution. To end this assault on parental rights, the Kentucky legislature enacted a law in 1990 increasing parents' legal rights in such cases. Legal Aid then sued claiming this was unconstitutional. The Supreme Court upheld the law.

See Andrew Wolfson, "High Court Rules on Rights of Retarded," *The Courier-Journal*, June 25, 1993, pg. 1A; State Rep. Bob Heineninger, "Unjustified Intrusion," *The Courier-Journal*, August 12, 1991, pg. 6A.

### Tries to Halt Deportation of Drug-Dealing Alien

In 1993, Central Kentucky Legal Services tried to halt the deportation of an alien convicted of drug dealing. In 1990, Carmen Gonzalez was convicted and sentenced to prison for possession and conspiracy to distribute cocaine. The Immigration and Naturalization Service then initiated deportation proceedings in accordance with immigration laws which hold that any legal alien guilty of a felony is deportable. On her behalf, legal services filed suit against the INS claiming they failed to recognize Gonzalez' efforts at rehabilitation. An appeals court rejected the argument because Gonzalez refused to acknowledge her guilt and insisted on blaming others for her crimes.

See *Gonzalez v. Immigration and Naturalization Service*, 996 F.2d, US App. Ct., 1993

### Sues State Demanding Heating Aid for People Already Receiving Aid

In 1991, the Northern Kentucky Legal Aid Society sued the state because it denied federal heating aid payments to residents of public housing whose monthly housing subsidies already included an energy allowance. Legal services argued that it was unlawful to count public housing energy assistance in determining who should receive federal heating aid. The state argued that it withheld payments to public housing residents so more money would be available to low income residents lacking any subsidies. A US Appeals court ruled for the state.

See *Kentucky v. North. Kentucky Welfare Rights Assoc.*, 954 F.2d 1179, US App. Ct., 1992

### Sues State Demanding Excessive Welfare Entitlements

In 1993, the Legal Aid Society sued the state for denying AFDC benefits to a woman because the state counted her boyfriend's SSDI payments in determining household income. Legal Aid's position reflects legal services broader welfare agenda which seeks to radically expand the number of persons eligible for assistance by excluding the income of family members in calculating household income. In this particular case, Brenda Tigner had been receiving AFDC benefits for her two children. When her boyfriend John Basham moved in, the state took away her AFDC because the SSDI benefits he and his own child were receiving raised the household's income above the AFDC eligibility level. Legal Aid argued that this was unlawful because they claimed that Tigner and her children did not actually benefit from Basham's SSDI. However, the court rejected the argument because it was clear that Basham's SSDI was in fact used for the benefit of the entire household.

See *Tigner v. Human Resources*, 858 S.W.2d 208, Ky. Ct. of App., 1993

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LEGAL SERVICES  
ACCOUNTABILITY  
PROJECT  
REPORT #25  
FEBRUARY 21, 1996

## Legal Services Abuses in Ohio

Besides being aggressive advocates of expanded welfare entitlements, Ohio recipients of federal legal services funding engage in other questionable litigation including challenges to drug testing for police officers.

### Cleveland Sued for Giving Police Cadets Drug Tests

In 1986, the Legal Aid Society of Cleveland sued the City of Cleveland for requiring police cadets to submit to a drug test. The case began in 1986 when the Chief of Police decided to administer a surprise test to cadets at the Cleveland Police Academy after receiving a tip that some were using drugs. Six cadets were found to have smoked marijuana and were forced to resign from the program. Legal Aid then filed suit charging that the drug test violated those individuals' constitutional rights. Legal Aid claimed that the drug test used was not the most reliable test available and that discharging cadets based on its results violated their rights to due process. However, in 1993 an appeals court rejected the argument because other tests confirmed the first test's findings. The court also noted that "drug tests bear a reasonable relation to the legitimate government interest of preventing police officers, who are charged with the job of drug interdiction, from abusing illegal drugs."

See *Feliciano v. City of Cleveland*, 988 F.2d 649, US App. Ct., 1993

### Legal Services Asserts Constitutional Right to Welfare

In 1992, legal services sued the state of Ohio claiming that its reduction of welfare benefits to employable adults was unconstitutional under federal and state law. Under the state's General Assistance program, Ohio provided healthy, employable adults with no children \$148 a month plus medical assistance for as long as they needed it. To control costs, the state changed the program to limit such adults to \$100 monthly benefits for no more than six months out of the year. Individuals who were too old or too young or suffered disabilities would still receive continuous coverage. However, the Legal Aid Society of Cincinnati and the Legal Aid Society of Dayton argued that the Ohio Constitution's guarantee of individuals' right to seek "happiness and safety," meant that the state was constitutionally obligated to provide public assistance that individuals may enjoy a minimum level of safety. A state appellate court rejected legal services' expansive interpretation of the Constitution. The court noted that were it to accept legal services' interpretation, the government would have to provide each citizen a minimal enjoyment of life, a minimal amount of property, and a minimal level of happiness and safety. The court called that an "untenable" interpretation.

See *Daugherty v. Wallace*, 87 Ohio App. 3d 228, Ohio App. Ct., 1993

### Advocates Excessive Welfare Payments

In 1992, the Legal Aid Society of Cleveland sued the US Department of Agriculture because it counted individuals' utility assistance payment as income in determining their eligibility for Food Stamps. Under the Utility Reimbursement program, residents of public housing are given Utility Allowances (UA) which are used to pay their utility expenses by reducing their rent. For example, a public housing tenant, with a UA of \$100 and a rent of \$150, pays only \$50 in rent. Frequently, however, the UA is more than the rent and tenants actually gain additional income. For instance, a household that pays \$75 in rent not only owes no rent but is given a \$25 credit to spend as they see fit. The USDA counts the money gained from such allowances as extra income in calculating Food Stamp eligibility. Legal Aid said it was unlawful to include UA-generated income because it wasn't clear that the money technically benefited the household. A federal appeals court said UAs do increase a household's income and ruled against Legal Aid.

See *Baum v. Madigan*, 979 F.2d 438, US App. Ct., 1992

### Hospital Threatened With Suit

In 1995, the Legal Aid Society of Cleveland threatened to sue a hospital for trying to save money by restricting the use of its outpatient pharmacies to the medically indigent. Cleveland's MetroHealth Medical Center decided to close its outpatient pharmacies to the medically insured and those able to pay to reduce a \$5 million budget shortfall. By limiting access to the uninsured and neediest, the hospital would save \$2 to \$3 million. However, Legal Aid claimed that this move violated a federal law that requires hospitals to provide a certain level of charity care. Legal Aid argued that cutting off outpatient services to the insured while maintaining access for the medically indigent somehow violated that charity provision. Hospital spokesmen said that the "horrible irony" is that if Legal Aid is successful they would have to close down the pharmacy completely to the poor and non-poor alike.

See Joan Mazzolini, "Complaint Aims to Bar Closure of Pharmacies," *The Plain Dealer*, March 1, 1995, pg. 18

### Sues INS for Not Paying Minimum Wage to Alien Detainees

In 1990, Southeastern Ohio Legal Services participated in a lawsuit against the Immigration and Naturalization Services for not paying illegal aliens minimum wage for menial labor performed while incarcerated at INS detention facilities. As part of the detention program, the Port Isabel Processing Center in Harlingen, Texas regularly offered work to detainees doing grounds maintenance, cleaning, cooking, laundry and other services. The work was strictly voluntary and paid \$1 a day. Legal services claimed this violated the Fair Labor Standards Act and demanded relief in the form of unpaid minimum wages for the workers and attorneys' fees for themselves. A US Appeals Court in Texas rejected the claim because minimum wage laws apply only to US workers and not to prisoners or illegal aliens in INS facilities.

See *Guevara v. INS*, 902 F.2d 394, US App. Ct., 1990

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LEGAL SERVICES  
ACCOUNTABILITY  
PROJECT  
REPORT #26  
March 8, 1996

## Legal Services Abuses in Ohio II

The federal legal services program in Ohio continues to deviate from its ostensible mission of representing the poor by engaging in class action lawsuits on behalf of prisoners and seeking the expansion of welfare to substance abusers.

### Jail Forced to Release Thousands of Criminals

Between 1992 and 1994, the Legal Aid Society of Lorain County forced the Lorain County jail to prematurely release more than 3500 criminals to avoid what Legal Aid defined as overcrowding. In 1994, Legal Aid also filed suit against the Lorain County jail for violating prisoners' constitutional rights. They contended that housing 45 inmates in a jail designed for 39 constituted cruel and unusual punishment under the 8th Amendment. Among the other violations cited by Legal Aid were: poor laundry services; life-threatening levels of tobacco smoke; and inadequate recreational facilities. They specifically cited the fact that the pingpong table had no paddles.

See Stephen Hudak, "Inmate Sues Over Conditions," *The Plain Dealer*, September 2, 1994, pg. 6B; "Elyna to House Inmates," *The Plain Dealer*, January 21, 1993, pg. 1B

### Defends Vandalizing Tenants

In 1993, the Stark County Legal Aid Society tried to prevent a local housing authority from evicting a woman and her daughters for repeated breaking windows and doors in their apartment. The authority's lease expressly calls for eviction of tenants for systematically damaging property. However, legal aid argued that because the authority didn't move for eviction in the previous cases then they couldn't use those cases as a basis for eviction. The problem with this interpretation is that the authority could never evict anyone for vandalizing property because it would be forbidden from entering evidence of past abuse. A state court ruled against legal aid for this reason and the fact that legal aid's rationale would force housing authorities to unfairly evict tenants after just one violation.

See *Stark Metropolitan Housing Authority v. Kirksey*, Ohio App. Ct., 1993

### Legal Aid Fights Efforts to Recoup Fraudulently Acquired Welfare

In 1995, the Central Ohio Legal Aid Society tried to prevent a county human services department from forcing a woman to repay more than \$7000 in welfare benefits that she had received fraudulently. In January, 1992, the Knox County Department of Human Services sent a letter to Reta Wantland demanding repayment of \$7326 in Food Stamps and \$10,473 in AFDC after it was discovered that she had illegally obtained those benefits over a five-year period. After refusing payment, a criminal court found Wantland guilty of several counts of welfare fraud and ordered her to make restitution. When Wantland went back on public assistance in 1993, the county sought to recoup the \$7000 she still owed for the Food Stamp overpayment by reducing her monthly benefits. Legal Aid challenged the county's action on procedural grounds which a state appeals court quickly dismissed as without merit.

See *Wantland v. Ohio Department of Human Services*, Ohio App. Ct., 1995

### Welfare for Alcoholics

In 1990, Northeast Ohio Legal Services challenged the denial of unemployment benefits to individuals who lost their jobs due to chronic alcoholism. The individuals legal services represented in this case had been repeatedly warned by their employers for irresponsible work habits related to their alcohol abuse. One employer issued numerous warnings to a woman for showing up to work drunk and even offered to give her time off to get treatment. Another abuser admitted to missing work 25 to 30 times in a three year period and showing up to work inebriated. In addition, he had received warnings from both his company and union about his alcohol abuse. Both individuals failed to seek treatment and were summarily fired. Legal services argued that they deserved unemployment benefits because their dismissals were not justified due to their inability to control their drinking. Legal services lawyers claimed that because alcoholism is recognized as a handicap under federal law, denying benefits to chronic alcoholics violates their civil rights. The Supreme Court of Ohio rejected this claim because both individuals were given an opportunity by their employers to treat their condition before dismissal.

See *Harris v. Ohio Bureau of Employment Services*, Ohio Supr. Ct., 1990

### Opposes Confiscating Property of Deadbeat Dads to Pay Child Support

The Legal Aid Society of Lorain County has filed suit in federal court challenging the county prosecutors' practice of confiscating the property of criminal defendants who owe child support. Assistant Lorain County Prosecutor Sherry Spenser got the idea when a "deadbeat dad," owing \$9500 in support, appeared in court on a drug-related charge wearing a \$115 starter jacket. She confiscated the jacket, sold it back to the defendant and sent the money to his six-year old son. In just one year, she managed to collect \$33,000 by confiscating defendant's cash, watches, golf clubs and articles of clothing. Most inmates, says Spenser, are usually willing to give up the money or buy back jewelry to avoid answering probing questions about their income and living arrangements. Legal Aid filed suit in November, 1994, alleging that the practice violates inmates' constitutional rights to due process.

See Sandra Clark, "Suit Argues Against Taking Property," *The Plain Dealer*, November 12, 1994, pg. 1B; Molly Kavanaugh, "Suit Not Halting Creative War," *The Plain Dealer*, May 20, 1995, pg. 1B

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LEGAL SERVICES  
ACCOUNTABILITY  
PROJECT  
REPORT #27  
March 22, 1996

## Legal Services Abuses in Michigan

Federally-funded legal services programs in Michigan have been especially active in trying to thwart Governor John Engler and the state legislatures' efforts to reform welfare and cut excessive spending.

### Opposes Kicking Able-Bodied Off Welfare

In 1991, legal services tried to stop the state from expelling 82,000 able-bodied adults from the welfare rolls. Confronted with an \$800 million budget deficit upon assuming office, Governor Engler asked the legislature to abolish General Assistance (GA) payments for childless adults who are physically able to work. General Assistance, targeted to individuals who are otherwise unqualified for federal welfare, paid an average of \$144 a month plus food stamps to recipients. However, lawyers from Michigan Legal Services, Legal Aid of Western Michigan and Legal Services of Southeastern Michigan argued that the cutoff was unconstitutional. Legal services claimed that because the termination notices sent to GA recipients were supposedly too confusing and inadequate, the state, by taking away their welfare, illegally deprived recipients of their property under the Michigan constitution. A state appeals court dismissed the argument ruling that the state did give adequate notice. More importantly, the court also held that welfare is not accorded the same legal protections as property under the state or federal constitutions.

See *Saxton v. Miller*, 191 Mich. App. 689, 1991; "Court Upholds a Welfare Cutoff," *The New York Times*, November 9, 1991

### Challenges Reduction in AFDC Benefits

In 1991, legal services sued the state for cutting AFDC benefits alleging that the reductions violated federal laws guaranteeing minimal payment levels. Governor Engler and the legislature reduced AFDC payments by 9.2% as part of a general budget-cutting drive they implemented to cut the budget deficit. However, legal services lawyers argued that Medicaid amendments prohibited decreases in AFDC benefits beneath 1988 levels. However, a federal court rejected the claim because the purpose of the Medicaid amendments was not to prohibit states from cutting their AFDC benefits but to prevent states from cutting AFDC to expressly fund Medicaid. The court determined that Michigan was not violating this amendment because the cuts were instituted to reduce the deficit and not to provide more money for Medicaid.

See *Babbitt v. State of Michigan*, 778 F. Supp. 941, US Dist. Ct., 1991

### Engler Official Ordered to Jail for Not Spending Money

For more than a year, Michigan Legal Services vigorously fought the Engler Administration's attempt to close down a state-funded mental health clinic in Detroit. Engler sought to close the Lafayette Clinic in 1991 as part of his campaign to reduce spending. However, legal services, in conjunction with a labor union and mental health activists took the administration to court claiming that they had no authority to take such action. The dispute grew so acrimonious that at one point a judge ordered the Director of the Mental Health Department, James Haveman, to jail for not spending money to keep the clinic open. Haveman objected that he couldn't spend the money because Engler had vetoed clinic funding. Haveman refused to show up in court and was never jailed. Eventually, a state appeals court upheld Engler's veto and the clinic was closed in October, 1992. The appeals court also overturned the order to jail Haveman on account that he couldn't spend money that wasn't there.

See "Temporary Injunction Ends," UPI Regional News, October 16, 1992

### Legal Services Participates in Prison Class Action Suit

Michigan Legal Services lawyers participated in a recently-settled lawsuit against the state for failing to provide female prisoners legal representation in child custody cases. From 1979 to 1993, the Department of Corrections contracted with a non-LSC prison legal services group to provide female inmates legal assistance in areas that included child custody disputes. In November 1993, the state terminated the contract on the grounds that it was unfair to spend money so prisoners can have free legal representation while law-abiding Michiganders have no such right. In the lawsuit which followed, Michigan Legal Services submitted an amicus curiae supporting the idea that the state is constitutionally obligated to provide female prisoners legal assistance in child custody disputes. A federal appeals court rejected the argument ruling that the Constitution only mandates legal assistance for prisoners in criminally-related cases; the Constitution does not require the state to provide prisoners with lawyers in civil actions such as custody disputes. The court concluded that "if the ordinary law-abiding Michigander has no constitutional right" to a lawyer in civil cases, then neither does a convict.

See *Glover v. Johnson*, 75 F.3d 264, US App. Ct., 1996

### Claims AFDC Recipients Can Quit Jobs and Still Get Welfare

In 1990, Legal Services of Eastern Michigan sued the federal government and the state claiming that they wrongly terminated an AFDC recipient's benefits for quitting a job. The recipient in question, Tim Boettger, was receiving AFDC benefits under the Work Incentive Program (WIN), a special program to encourage recipients to seek and retain employment. On February 14, 1987, Boettger through his own efforts got a job and then voluntarily quit two days later. The Michigan Department of Social Services then terminated his benefits for three months for quitting without good cause. Legal services argued that if Boettger got the job himself, he should be able to quit when he wants. The federal appeals court, calling legal services arguments "illogical" and "disingenuous," rejected the claim ruling that the ability of a recipient to terminate his employment and still receive AFDC totally defeats the purpose of the WIN program.

See *Boettger v. Bowen*, 923 F.2d 1183, US App. Ct., 1991

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LEGAL SERVICES  
ACCOUNTABILITY  
PROJECT  
REPORT #28  
April 2, 1996

## Legal Services Greatest Hits

The federal legal services program has developed a reputation for filing ideologically-motivated litigation that often borders on the ludicrous. The following is a compilation of cases from the last five years detailed in previous issues of LSAP reports.

### LSC Grantees Sue California for Denying Drivers Licenses to Illegal Aliens

Recently, two LSC grantees sued California's Department of Motor Vehicles for refusing to issue drivers' licenses to illegal aliens. As required law, the DMV requires that all applicants provide proof of legal residency to obtain licenses and registration. However, the National Immigration Law Center and California Rural Legal Assistance saw fit to sue the DMV on behalf of several illegal aliens who had their applications rejected. The attorneys took the position that even if their presence in the United States is unlawful they are still entitled to a driver's license. A state appeals court didn't buy the argument and ruled that the "DMV is not only authorized but obligated" to deny licenses to illegal aliens.

See *Lauderbach v. Zolin*, 35 Cal. App. 4th 578, May 30, 1995

### Hospital Criticized for Frightening Illegal Aliens With Uniforms

In 1991, Texas Rural Legal Aid threatened to sue a hospital in McAllen, Texas because its security guards wore uniforms resembling those of Border Patrol Agents. Legal services said this was discriminatory against illegals because it discouraged them from seeking care. Hospital spokesmen denied the charge and pointed out that they provided \$14 million in uncompensated care in 1989 alone. Hospital officials add that if they really wanted to discourage illegals from seeking services, they would charge for parking like other hospitals.

See *Modern Healthcare*, December 17, 1990 and January 28, 1991

### Legal Services Demands Disability for Habitual Criminal

In 1994, the Legal Assistance Foundation of Chicago sued the federal government demanding social security disability benefits for a man who admitted to making a living from crime. Legal Aid's client, one Jimmie Jones, freely admitted that he robbed people and stole cars to support his \$60 a day drug habit. Jones, who had been arrested more than 100 times in his life, also received welfare. Nevertheless, Legal Assistance argued that even though Jones could support himself through illegal "gainful activity," he was still incapable of finding legal gainful employment. The judge in the case ruled that if Jones could make a living from a life of crime, he was certainly capable of earning a living from legal employment.

See *Jones v. Shalala*, 21 F.3d 191 (US App. Ct.) 1994

### Homeless Go On \$400,000 Drug and Drinking Binge

In 1991, the Legal Aid Society of Orange County won \$400,000 from the city of Santa Ana for more than 30 homeless persons as compensation for supposed suffering they experienced when police forcibly removed them from the grounds of the city civic center. Despite the fact that the vast majority of the homeless plaintiffs were drug addicts and alcoholics, the settlement Legal Aid lawyers worked out simply gave each homeless person \$11,000 without any requirements that they get counseling for their maladies. The predictable result was a wild binge of drunkenness, drug use and outlandish squandering of money. One homeless person said he used his money to treat his friends to a night on the town in a limo and looking for all the drugs his money could buy. Another also admitted to "cruisin' in a luxury car with friends and getting drunk. One man who fared better than the rest said he found a nice apartment with a jacuzzi but says he still drinks and has no intention of getting a job. Within months, of the 31 homeless plaintiffs who received damage awards, 11 were homeless again, several were running out of money and some had simply disappeared. Only 9 were legitimately trying to turn their lives around. All Legal Aid lawyers had to say was that the homeless were entitled to use the money as they saw fit.

See Gebe Martinez, "Money Didn't Buy Them Happiness," *Los Angeles Times*, Dec. 2, 1991, pg. A1

### Ohio Jail Forced to Release Thousands of Prisoners

Between 1992 and 1994, the Legal Aid Society of Lorain County forced the Lorain County Jail to prematurely release more than 3500 criminals to avoid what Legal Aid defined as overcrowding. In 1994, Legal Aid also filed suit against the Lorain City Jail for violating prisoners' constitutional rights. They contended that housing 45 inmates in a jail designed for 39 constituted cruel and unusual punishment under the 8th Amendment. Among the other violations cited by Legal Aid were: poor laundry services; life-threatening levels of tobacco smoke, and inadequate recreational facilities. They specifically cited the fact that the pingpong table had no paddles.

See Stephen Hudak, "Inmate Sues Over Conditions," *The Plain Dealer*, September 2, 1994, pg. 6B; "Elyria to House Inmates," *The Plain Dealer*, January 21, 1993, pg. 1B

### Legal Services Files Baseless Discrimination Suit

East Texas Legal Services sued the city of Beaumont seeking damages for several black officers who alleged discrimination in the department's disciplinary and promotion policies. However, a federal court ruled in favor of the Beaumont Police Department because of the comically baseless allegations of East Texas' clients. For instance, one of the former officers complained that his being fired for shoplifting at a 7-11 was unfair and racially motivated. The court rejected another officer's claim that he was wrongly denied promotion to a S.W.A.T. team on account of race when it was brought to light he couldn't shoot straight — an essential skill in this elite unit.

See *Martin v. City of Beaumont*, 8-R7-1076 (US App. Ct.) 1992

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LEGAL SERVICES  
ACCOUNTABILITY  
PROJECT  
REPORT #29  
April 10, 1996

## Legal Services Abuses in Michigan II

Federally-funded legal services programs in Michigan frequently violate their purported mission of assisting the poor in their daily legal needs by filing suits to advance their personal political agendas. Many of these suits seek welfare benefits for individuals who either don't deserve or don't need assistance.

### Challenges Reduction of Welfare to Woman Who Refused to Work

In 1994, Legal Services of Eastern Michigan sued the state for reducing the welfare benefits of individuals who voluntarily quit their jobs. In this case, AFDC recipient Darlene Smith obtained a job at a nursing home and was given an Earned Income Disregard (EID) to encourage her efforts at self-sufficiency. Under the EID, the state didn't count the income Smith earned from her job so that she would not be disqualified from AFDC. This is supposed to provide recipients a smoother transition to self-sufficiency, by not drastically lowering their income when they start working. However, in January 1989 Smith voluntarily quit her job at the nursing home for no other apparent reason than that she didn't want to work. Because she quit her job without good cause, the state withdrew Smith's EID for January and counted her nursing home income which led to a temporary reduction in her AFDC payments. Legal services sued on Smith's behalf claiming that the EID is only meant to encourage work and should not be used to punish recipients who quit their jobs. A federal appeals court rejected legal services' argument for leniency because "it does nothing to encourage employment among AFDC recipients."

See *Smith v. Babcock*, 19 F.3d 257, US App. Ct., 1994

### Opposes Inclusion of Spouse's Income in Calculating Welfare Eligibility

In 1990, Michigan Legal Services sued the state for including the welfare payments of one spouse in calculating another spouse's eligibility for additional welfare. In 1987, John Pyke applied for food stamps and general assistance. His application for general assistance was denied because his wife Mary was already receiving federal SSI benefits of \$369 a month. The state reasoned that the benefits received by Mary should be considered as benefiting John by virtue of their being husband and wife. Legal services claimed that this violated a number of laws including their clients' 14th amendment rights. However, a state appeals court ruled against legal services, finding nothing "irrational" in calculating an individual's qualifications for welfare by taking into account his or her spouse's financial resources.

See *Pyke v. Dept. of Social Services*, 182 Mich. App. 619, Ct. of App., 1990

### Stops Effort to Recoup Illegally Obtained Welfare

In 1991, Michigan Legal Services stopped the state Department of Social Services from recouping nearly \$1500 in illegally obtained welfare benefits from a recipient. In this case, the recipient and her children moved into an apartment which entitled her to receive a monthly shelter allowance of \$185 in addition to her regular AFDC grant. However, later it was discovered that her landlord was the father of one of her children. State regulations expressly prohibit shelter allowances for AFDC families when the landlord is a parent of one of the children. The state terminated the shelter allowance and reduced her monthly AFDC grant to recoup the \$1480 in shelter allowances. However, on appeal, Michigan Legal Services stopped the garnishment because the regulation authorizing the recoupment was not properly promulgated according to federal rule-making procedures.

See *Palazzo v. Dept. of Social Services*, 189 Mich.

### Wins Major Case Expanding Right to Unemployment Benefits

In 1991, Wayne County Neighborhood Legal Services (WCNLS) won a major case before the Michigan Supreme Court when it ruled that individuals who lose their jobs for failing licensing exams are eligible for unemployment benefits. Legal services brought the case on behalf of two nurses who were fired by their hospitals for failing their professional licensing exams. Because the state only authorized unemployment for individuals who lose their jobs through no fault of their own, the Michigan Employment Security Commission turned down their applications. However, WCNLS reasoned that because the nurses involuntarily failed their exam, they should get unemployment. The court agreed despite the protestations of the defendant hospitals who wondered why they should have to underwrite people who are responsible for failing their own tests.

See *Clarke v. North Detroit Receiving Hospital*, 437 Mich. 280, Mich. Supr. Ct., 1991; Richard Dumas, "Fired Employees Are Entitled to Jobless Pay," *Michigan Lawyers Weekly*, June 3, 1991

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LEGAL SERVICES  
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PROJECT  
REPORT #30  
April 19, 1996

## Legal Services Abuses in Illinois

Illinois recipients of federal legal services funding systematically misuse their grants to pursue ideologically-inspired litigation or to defend individuals unworthy of subsidized legal representation. In particular, legal services expends considerable money and time defending the rights of drug dealers to stay in public housing over the objections of housing authorities and even the tenants themselves.

### Legal Assistance Foundation Keeps Drug Dealers in Public Housing

The Legal Assistance Foundation (LAF) of Chicago has repeatedly interfered with the Chicago Housing Authority's (CHA) attempts to evict drug dealers from its public housing. For years, housing authorities were unable to expel drug dealers and other criminal tenants due to excessive legal protections, such as a right to a jury trial, for tenants slated for evictions. For instance, many residents had complained of an "unauthorized tenant" running a gang from his apartment with a pit bull by his side, yet more than a year later he was still in public housing. To rectify the problem, the CHA instituted a new policy in 1992 to expedite evictions by making tenants responsible for the conduct of guest-visitors. Typically, drug dealers will use the residences of willing tenants to engage in their illegal activities. By making tenants liable for the actions of "visitors," the CHA would finally have the power to quickly expel criminals. However, the LAF immediately sued the CHA claiming that such speedy evictions are unconstitutional even when the evidence is overwhelming that the tenants are participating in criminal activity. In a noteworthy 1993 case, the LAF prevented the eviction of Annette Freeman, an accused crack cocaine dealer. LAF persisted in its ultimate successful defense of Freeman even though police said they observed her dropping bags of cocaine from her window. In an especially tragic twist to the case, two months before her arrest, Freeman's 7-year-old son was shot to death by a sniper as he walked to school.

See Flynn & Roberts, "HUD Defines CHA Problems," *The Chicago Tribune*, June 15, 1995, pg. B1; Andrew Fegelman, "CHA Eviction Illegal," *The Chicago Tribune*, March 27, 1993, pg. 5.

### Claims of Unconstitutional Mistreatment of Aliens Found Baseless

In 1992, the Legal Assistance Foundation of Chicago sued the Immigration and Naturalization Service (INS) for allegedly subjecting alien detainees to inhumane conditions of confinement. In a decision handed down in 1995, a federal district court threw out all of the charges. Among LAF's baseless complaints was that the food was nutritionally inadequate and thus violated constitutional guarantees of decent treatment. The essence of LAF's complaint was that the food was too repetitive. It seems the detention facilities often served round steak, burnt-toasted potatoes, green beans and rice which according to LAF wasn't sufficiently diverse. The court rejected the complaint because it didn't rise to the level of a constitutional violation. LAF also alleged constitutional violations of the detainees' rights to sufficient indoor and outdoor exercise time. The court rejected this claim as well, citing the fact that detainees had access to a large day room where they could watch TV, play board games, read and use the phone. Furthermore, one facility did allow outdoor recreation when weather permitted. Finally, LAF claimed that limits on visitation with family and friends and the use of the telephone was unconstitutional punishment. However, this claim too was rejected because detainees — whose average stay in the facilities was well less than a year — could meet with visitors four hours a day, five days a week and had unlimited access to the phone in the same period. LAF nevertheless contended that the two day deprivation of visitation and phone privileges was unconstitutional.

See *Imasuen v. Moyer*, No. 91 C 5425, US Dist. Ct., 1995.

### Judge Lambastes LAF for Excessive Legal Bill

In 1992, a federal appeals court thrashed the Legal Assistance Foundation for requesting exorbitant legal fees in a routine disability case. Judge Robert Chapman of the 4th US Circuit Court of Appeals accused LAF and the private attorneys participating in the case of wildly inflating the hours in order to get "grossly excessive" legal fees. The case concerned an individual's application for Black Lung benefits. Calling it "no more than an average case," Judge Chapman angrily denounced LAF's \$312,000 legal bill as "obscene" when fees in such cases average only \$12,000 to \$15,000. He specifically charged that the attorneys should have spent no more than one quarter of the 1200 hours they claimed they devoted to the case. Furthermore, Chapman called their \$170 per hour rate excessive in light of the attorneys' expertise. Saying the legal bill just "boggled the mind" and "shocks the conscience," Chapman slashed the request to \$43,000 and left it to the attorneys to divide among themselves.

See G.L. Marshall, "Attorneys Ripped for Excessive Fees," *U.P.I.*, Sept. 4, 1992.

### Parents Get Grants for Being Dirty

In 1991, the Legal Assistance Foundation won its suit against the state in which they claimed that parents who lose custody of their children by maintaining dirty homes should receive cash grants to improve conditions. Under the plan, which was estimated to cost \$1.8 million per year, the Department of Children and Family Services would provide grants of up to \$800 to more than 6000 families who lost custody of their children for not providing adequate shelter, food or clothing, or for keeping a dirty home. LAF said the families needed the extra money because in losing their children they lost the AFDC benefits and thus lacked the resources to clean up their homes.

See Rob Karwath, "DCFS to Offer Grants to Clean Dirty Homes," *The Chicago Tribune*, January 26, 1991, pg. 6.

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LEGAL SERVICES  
ACCOUNTABILITY  
PROJECT  
REPORT #31  
MAY 2, 1996

## Legal Services Abuses in Illinois II

Federal legal services programs in Illinois have a lengthy record of political advocacy which includes support for radically expanded welfare entitlements. Legal services also shows poor judgment by representing substance abusers applying for welfare and tenants fighting eviction by contributing to crime in public housing.

### LAF Seeks Disability Benefits for Chronic Alcoholic

In 1995, the Legal Assistance Foundation of Chicago tried to obtain Supplemental Security Income (SSI) benefits for a man who claimed his chronic alcoholism prevented him from working. The man in question, Carey Tillery, already received \$157 a month in assistance plus food stamps. LAF argued he deserved SSI because he drank so much he couldn't work. Tillery admitted to drinking as much as 12 pints of vodka every day and only stops drinking when he gets too sick. Tillery claimed that he had been unable to find gainful employment since he lost a job in 1984. Tillery had never entered Alcoholics Anonymous or any rehab program to deal with his drinking problem. The government initially denied Tillery's application for SSI because his eleven years of prior employment demonstrated a minimal ability to earn a living. However, LAF argued that because he was drunk most of the time while working, Tillery had demonstrated an inability to support himself and thus should be considered eligible for disability. A US District Court partly agreed with LAF and ordered the government to reconsider its decision.

See *Tillery v. Shalala*, US Dist. Ct., 1995

### Threatens to Sue Chicago School Board for Not Having Girls Soccer

In 1994, LAF threatened to sue the Chicago Board of Education if it didn't make girls soccer an official sport in the Chicago Public League. LAF attorneys contended that the school board's failure to establish a girls soccer league was discriminatory and violated federal civil rights laws. The board claimed that it didn't establish a girls league due to lack of interest and that they allowed girls to try out for the boys teams. However, LAF rejected the arguments and to forestall a suit, the board agreed to create a league.

See Barry Temkin, "It's Time to Savor Grudging Win," *Chicago Tribune*, May 1, 1994, pg. 20

### Prosecutor Sued for Calling Convicts "Savages"

In 1993, LAF sued a Cook County prosecutor for describing convicts it was transferring to state prisons as "savages" and other unflattering characterizations. When prosecutors send convicts to the state Department of Corrections, they forward statements describing the type of individual they are getting so that prisons may determine their security risk. LAF filed suit claiming that inmates have a legal right to objective statements void of emotionally charged rhetoric. A 1st District Appellate Court rejected the claim ruling that prisoners have no such right.

See David Bailey, "Prosecutor Comments on Jail-Bound Convicts Upheld," *Chicago Daily Law Bulletin*, November 16, 1993, pg. 3

### Welfare for Illiterates

In 1992, LAF threatened to go to court to reverse a decision by state officials to end welfare benefits for 9000 illiterates. Under the state's transitional assistance program, individuals considered unable to work due to physical conditions, addiction or other factors received monthly grant, medical care and food stamps. Under those guidelines, individuals who could not read above the sixth-grade level were considered eligible for one year of assistance. However, a number of welfare advocates including LAF criticized the one-year rule as arbitrary and unreasonable. They insisted that the state must insure that illiterates are sufficiently educated before forcing them from assistance. However, state legislators argued that there were already "hundreds of programs" to help such people improve their educational skills and there's nothing else they can do to force people who don't want an education to go to school. Nevertheless, the state said it would reconsider its decision.

See Charles N. Wheeler, "State Reconsiders 1-Year Cutoff for Illiterate," *Chicago Sun-Times*, December 10, 1992, pg. 22

### LAF Forces State to Spend Additional Millions on Welfare

In 1993, LAF won a significant victory when a federal judge supported its claim that the state was obligated to finance the child-care expenses of mothers participating in job-training or educational programs. Illinois had refused to pay for child-care expenses of the welfare mothers in its training program due to a shortage of funds. The state already paid for the tuition, books and transportation expenses of the participants who also were receiving AFDC payments of up to \$367 per month plus food stamps. However, a US District Judge sided with LAF and ruled that federal law mandates that the state pay the child care expenses.

See Matt O'Connor, "State Must Pay Child Care," *Chicago Tribune*, February 24, 1993, pg. 3

### Opposes Housing Authorities Efforts to Control Crime

In 1992, LAF sued the Chicago Housing Authority for holding tenants responsible for the criminal activity of relatives or guests visiting public housing. The case arose when CHA tried to evict two women for failing to supervise the conduct of their sons who had committed crimes while on CHA property. LAF argued that the CHA policy of requiring tenants to police the conduct of their children violates the tenants' constitutional right to free association. A federal court rejected the argument ruling that because crime in public housing injures innocent tenants, no "right of intimate association" allows a tenant to let guests "run riot."

See *Donner v. Chicago Housing Authority*, 969 F.2d 461, US App. Ct., 1992

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LEGAL SERVICES  
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REPORT #32  
MAY 14, 1996

## Legal Services Promotes Crime in Public Housing

Despite new restrictions, LSC regulations still permit federally-funded legal services lawyers to continue their representation of individuals in drug-related eviction cases. Much of the drug problem is caused by tenants who allow relatives or guests to use their residences for criminal activity. While new LSC rules prohibit representation of tenants directly charged with drug offenses, legal services can still represent tenants who knew about and financially benefited from illegal drug activity as long as they weren't specifically charged with the crime.

### Tenant Can Not Be Evicted for Husband's Drug Crime

In a 1994 case, legal services stopped the Sarasota, Florida Housing Authority from evicting a tenant whose husband had been arrested for cocaine possession. Gulfcoast Legal Services argued that terminating her Section 8 housing subsidy, which led to eviction proceedings, was improper because the PHA did not conduct a hearing beforehand (Section 8 payments are distributed by the Department of Housing and Urban Development to low-income individuals so they can rent apartments out of their income range). The PHA argued to no avail that a pretermination hearing was not required when the reason for termination is drug activity by a member of the tenant's family.

See *Stuber v. Housing Auth. of Sarasota*, M.D. Fla., Dec. 12, 1994

### Eviction of Tenant for Guest's Drug Crime Dismissed

The Dade County Public Housing Authority (PHA) sought to evict a tenant after a guest staying in her apartment was arrested for possession of cocaine. The guest was chased into the tenant's apartment by police who had been observing him on the street outside the residence. Legal services stopped the eviction on technical grounds that the eviction notice failed to state a valid reason for such action. In exchange for being allowed to stay in the apartment, the tenant agreed to "take all reasonable steps" to notify the PHA if the accused entered her apartment.

See *Metropolitan Dade County v. Kendrick*, Fla. County Ct., February 10, 1995

### Florida Woman Accused of Criminal Activity Wins Eviction Case

The Dade County Housing Authority attempted to evict a tenant for alleged involvement in criminal activity. In one incident, the tenant's boyfriend who was on housing property with her consent had threatened the building manager. However, Legal Services of Greater Miami stopped the eviction, claiming that the PHA did not state with proper specificity all of the grounds for eviction.

See *Metropolitan Dade County v. Jones*, Fla. County Ct., July 12, 1994

### Tenants Accused of Drug Activity Win South Carolina Eviction Case

In 1994, the Housing Authority of Spartanburg, South Carolina was prevented from evicting two tenants it claimed were allowing illegal drug sales on housing property. Piedmont Legal Services argued that the individuals could not be evicted because they were technically not tenants. The individuals were participating in a special home ownership program in which they could purchase their homes from the PHA after renting for a period of time. Because they were seeking to purchase their homes, legal services argued that they were not tenants and that eviction would be unfair because they could not recover their investment in the property.

See *Housing Authority of Spartanburg*, S.C. S.C. Ct., Dec. 13, 1994

### Miami Legal Services Prevents Eviction of Accused Drug Criminal

In 1995, Legal Services of Greater Miami stopped the Dade County Public Housing Authority (PHA) from evicting a tenant arrested for cocaine possession. Legal services argued that the housing authority could not evict the tenant because he did not commit the alleged crime near public housing property. In addition, legal services charged that the PHA did not give the individual a fair and unbiased grievance proceeding. The PHA agreed to stop the eviction in exchange for legal services dropping its counterclaim.

See *Metropolitan Dade County v. Perez*, Fla. County Ct., March 1, 1995

### Susquehanna Legal Services Stops Eviction of Murderer

In 1995, Susquehanna Legal Services of Pennsylvania stopped the eviction of a tenant arrested for conspiracy to commit murder. After her arrest the Union County Housing Authority moved to evict her by terminating her Section 8 payments. However, legal services argued that being arrested was insufficient grounds for terminating her subsidy. Although she admitted that her husband was involved in the murder, legal services insisted that a decision to terminate tenancy should be supported by more credible evidence. On appeal, legal services overturned the woman's eviction on the grounds that it violated the U.S. Housing Act and her 14th Amendment rights. The woman was later "evicted," however, after she was convicted of participating in the murder with her husband. PHA still had to pay \$1500 in attorney fees to Susquehanna.

See *Bernhart v. Housing Auth. of Union County*, M.D. PA., February 21, 1995

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LEGAL SERVICES  
ACCOUNTABILITY  
PROJECT  
REPORT #33  
MAY 29, 1996

## Legal Services Abuses in New York

Federally-funded legal services programs in New York systematically misuse taxpayer dollars to pursue litigation on behalf of the most underserving of clients. This includes violent individuals threatening the safety of their neighbors and homosexuals in child custody cases.

### Beggar's Income Should Not Be Counted in Setting Welfare Benefits

In 1992, MFY Legal Services of New York City claimed that the money earned by a beggar through panhandling should not be counted as income when determining his eligibility for welfare benefits. Beggar Kevin Barry sought the services of MFY after the Social Security Administration (SSA) informed him that they were going to reduce his monthly Social Security Disability (SSDI) checks by \$250. That is the amount of money he typically made each month from panhandling. The SSA exempts certain types of "earned income" to encourage recipients to work and become self-sufficient. However, the SSA does not exempt money accrued from panhandling. However, MFY said Barry's income should be considered "earned" because "he actively sought contributions" and did not passively hold his hand out waiting for money.

See "Brazen Beggar," *The Columbus Dispatch*, Dec. 10, 1992, pg. 6A.

### Stops Eviction of Violent Tenant

In 1993, Brooklyn Legal Services successfully defended an abusive tenant from being evicted from his apartment despite terrorizing his neighbors. For years, the man publicly abused neighbors and passersby, with a special animus against blacks, Jews and homosexuals. Besides shouting out obscenities in the middle of the night, he physically assaulted tenants, hurled under blocks and furniture off the roof and harassed a woman to the point she needed an order of protection against him. On one occasion, a SWAT team had to be called in to deal with one of his more violent outbursts. Finally, after tenants started to leave the building to get away from their dangerous neighbor, the landlord moved to evict him. After nearly two years of legal action, Brooklyn Legal Services stopped the eviction by arguing that although his behavior may have been offensive to other tenants, he did not pose a danger to their safety.

See "Who Murdered Quiet Enjoyment?" *Real Estate Weekly*, June 21, 1995, pg. 10.

### City Sued for Closing Crackhouse

In September 1992, the City of New York responded to long-standing complaints and closed down a crackhouse that had been plaguing a neighborhood with shootings, prostitutes, and assorted health hazards. MFY Legal Services responded by suing the city for illegally evicting seven of the 15 tenants living in the building. Although none of the evicted tenants were charged with illegal activity, the building had been a magnet for drug dealers and other criminals that threatened the safety of the neighborhood. While residents were relieved that the city finally shut down the eyesore, an MFY attorney claimed that the swift action was racially motivated because the evicted tenants were "people of color." Neighbors angrily denied the accusation and said they were just glad that children could finally play in the street where before there had been shootings and vermin.

See "City Illegally Evicted Tenants, Court Rules," *Newsday*, Dec. 22, 1992, pg. 21.

### Flophouses Threatened by Legal Services Litigation

In 1994, MFY Legal Services stopped the eviction of a man from a Manhattan "Flophouse" in a significant decision that could seriously undermine the provision of temporary housing for the poor. The case began in 1990 when the Palace Hotel sought to evict William Hargrove from his cubicle for not paying \$6 nightly rent. However, MFY Legal Services argued that the cubicle occupied by Hargrove, just big enough for a bed and locker, was equivalent to a housing accommodation and thus subject to onerous eviction laws. Flophouse owners and other providers of Single Resident Occupancy (SRO) housing deplored the decision. The Executive Director of the flophouse said the only time tenancy becomes an issue is when legal services decides to get involved and usually that is on the behalf of "the least desirable tenant who disturbs everyone else." MFY's client did not personally benefit from the state appellate court's decision. A year before the case was decided, Hargrove set fire to his cubicle and subsequently disappeared.

See "Court Says Flophouses Fall under Rent Stabilization," *Real Estate Weekly*, April 20, 1994, pg. 21.

### Legal Services Gets Involved in Homosexual Child Custody Case

In 1993, the Legal Aid Society of New York successfully assisted a lesbian in winning custody of a child in a bizarre custody battle that involved another homosexual. The case began in the 1980s when the woman artificially inseminated herself with the sperm of a homosexual man who agreed to donate his sperm so she could have a child. At the time, the man agreed not to exercise parental rights. The woman had a girl and reared her for several years with her lesbian partner and her partner's daughter (Also the result of an artificial insemination by a homosexual). The homosexual donor later decided he wanted more parental rights with the little girl which resulted in the legal action. Legal Aid won the case by arguing that the little girl would suffer psychological harm if the homosexual man disrupted the lesbians' family life.

See *Thomas S. v. Robin Y.*, 157 Misc. 2d 858, Family Court, New York County, 1993.

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LEGAL SERVICES  
ACCOUNTABILITY  
PROJECT  
REPORT #34  
JUNE 5, 1996

## Legal Services Abuses in New York II

New York legal aid programs funded by the Legal Services Corporation grossly misuse taxpayer dollars by filing lawsuits that are sharply at odds with their mission of assisting the poor. Besides suing municipal governments for trying to reform welfare, legal services lawyers repeatedly sue private charities that are really trying to help the poor.

### Legal Services Sues to Stop Giuliani Crackdown on Welfare Fraud

Bronx Legal Services, an LSC grantee, and the Legal Aid Society of New York (a former LSC grantee) filed a federal lawsuit in an attempt to enjoin Mayor Rudolph Giuliani's successful anti-welfare fraud program. Known as the Eligibility Verification Review, the program was designed by city officials to screen out the thousands of individuals engaging in costly welfare fraud. Since the program was instituted in January 1995, the number of people receiving public assistance through the city's Home Relief program for single adults has dropped from 244,000 to 179,000. However, like legal services groups elsewhere in the country, New York legal services programs are strongly opposed to such efforts to make welfare more efficient. In the lawsuit, legal services claims the program should be terminated because recipients are illegally intimidated and harassed by investigators. Commented Richard Schwartz, Giuliani's chief welfare policy advisor: "These legal advocacy groups are defenders of an old and failed system that has hurt the city and the recipients in the program for many years."

See Kimberly McLann, "City Sued Over Program to Curb Welfare Fraud," *The New York Times*, December 30, 1995, pg. 31

### Legal Services Sues Salvation Army

In 1992, MFY Legal Services sued the Salvation Army for trying to evict individuals from one of its charitable facilities. The Salvation Army's "Ten Eyck-Troughton Memorial Residence" in Manhattan, provided women of low to moderate income lodging, meals and other services for modest rents of \$121 to \$134 per week. When the charity moved to evict some residents for not paying rent, MFY Legal Services sought to stop the action by challenging its legal status as a charity. In New York City, charities are not required to go through the onerous eviction procedure that private landlords must follow in evicting a tenant. The Salvation Army's Eyck-Troughton residence was exempted from these rent laws because it was operated "exclusively for charitable purposes on a non-profit basis." However, in its suit legal services argued that the religious mission of the Salvation Army disqualified the residence from being defined as a charity. According to legal services, because the residence was operated by a branch of the Christian Church and religious activities took place on its premises, then the residence could not be classified as a facility "exclusively" devoted to charitable purposes. A state appeals court rejected the argument observing that the religious activities in question, which included a Bible Club and Vespers, were strictly voluntary and organized by the tenants. Furthermore, the court noted that the residence was open to all women on a nonsectarian basis.

See *Salvation Army v. Cruz*, 615 N.Y.S.2d 805, 1994

### Legal Services Sues Salvation Army

In 1989, MFY Legal Services sued the Salvation Army for trying to change the charitable mission of one of its care facilities. The facility, known as the Anthony Residence, had been operating as an Adult Care facility since the 1970s. As an adult care facility, Anthony Residence provided long-term residential care and services to people unable to live independently. In 1986, the Salvation Army decided to change Anthony Residence from an adult care facility to a home for low-income working women. Over the next two years, the Salvation Army and the state Department of Social Services assisted the relocation of the residents to other licensed care facilities. However, MFY Legal Services sued on behalf of the few residents who didn't voluntarily leave, claiming violation of landlord-tenant laws. The court rejected legal services' argument ruling that the Salvation Army did not have to go through time-consuming and costly eviction procedures just so they can change the mission of one of their charities. The court also observed that legal services clients had six years to find a new place to live and it was unfortunate that during that time nothing was done to find accommodations for them.

See *Salvation Army v. Alverson*, 597 N.Y.S.2d, 1992

### Long Island Charity Sued for Expelling Disruptive Resident

In 1992, Nassau-Suffolk Law Services Committee sued a private charity for expelling a disruptive tenant. In January 1992, Barbara Torres and her two children were admitted into the Haven House Shelter, an emergency facility operated by the Huntington Coalition for the Homeless that provided lodging and services to homeless people. As a condition for staying in Haven House, Torres had to abide by the shelter's rules and attend rehabilitation programs. However, she refused to attend rehabilitation. In addition to breaking many rules, including allowing her boyfriend to visit at all hours of the night, she failed to take proper care of her children. She even refused to treat them for head lice. Nassau-Suffolk lawyers argued that Haven House could not evict her without going through lengthy eviction proceedings. A State Supreme Court Justice rejected the argument. He noted: "To require places like Haven House to seek judicial intervention each time they want to expel somebody" would clog their operation...and greatly disserve the other residents who are trying to turn their lives around."

See Edward Adams, "Judge Supports Shelter's Removal," *New York Law Journal*, August 26, 1992, pg. 1

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LEGAL SERVICES  
ACCOUNTABILITY  
PROJECT  
REPORT #35  
JUNE 11, 1996

## Legal Services Abuses in New York III

Federally-funded legal services programs in New York deviate from their mission of helping the deserving poor by defending the right of dealers to stay in public housing and pressuring local governments to spend scarce dollars on inefficient welfare programs.

### Legal Services Defends Accused Drug Criminal

In 1991, Bronx Legal Services sued a low-income housing corporation for trying to expel a tenant who allegedly used his apartment to sell drugs. Tenants repeatedly complained that Victor Hernandez was heavily involved in drug activity. Several testified that they observed what they considered probable drug buys taking place in his apartment and being awakened at all hours of the night by fights and yelling. Legal services sought to stop the eviction on the grounds that there was no definite proof of Hernandez' drug activity. A court rejected legal service's claim, ruling that the housing development doesn't have to prove the existence of illegal drug activity but only have considerable circumstantial evidence. However, the court delayed the eviction on the condition Hernandez desist from his disruptive behavior and get psychiatric help.

See *St. John Housing Development Fund v. Hernandez*, 584 N.Y.S.2d, 1992.

### Tenant Represented in Drug-Related Eviction

In 1994, Queens Legal Services sought to stop the eviction of a woman who allowed her son, a known drug dealer, to live in her apartment. Under the rules of the New York City Housing Authority, tenants who permit relatives or friends to use their residences for illegal activity are subject to eviction. In this case, there was no doubt that the tenant was permitting her son to live with her while he committed crimes. The son who had sold drugs on the property of the housing project, admitted to his living in the apartment as did the mother. The state supreme court rejected legal service's attempt to overturn the eviction in view of the overwhelming evidence against the woman. Despite recent restrictions, legal services lawyers can still represent family members who know about illegal drug activity as long as they aren't charged with the crime.

See *Kilafiski v. Blackburne*, 609 N.Y.S.2d 819, 1994.

### Long Island Drug Dealers Defended in Eviction From Public Housing

In 1992, Nassau-Suffolk Law Services sought to stop the eviction of a public housing tenant involved in dealing drugs. In 1991, Tyrone Wells and Lauralyn Wells, were arrested and charged with using their residence in the Hempstead Housing Authority for the manufacture, sale or distribution of drugs. Both pled guilty to the charges. Tyrone Wells was sentenced to prison, Lauralyn Wells did not go to jail. Eleven months after pleading guilty, the housing authority commenced eviction proceedings against Lauralyn Wells. Legal services lawyers argued that the authority waived its right to evict by continuing to accept rent from Wells following her arrest. A Nassau County court rejected the claim, ruling that federal law clearly permits public housing authorities to terminate the leases of tenants engaged in drug-related criminal activity.

See *Hempstead Housing Authority v. Wells*, 590 N.Y.S.2d 1014, 1992.

### Nassau-Suffolk Law Services Forces Additional Welfare Spending

In 1990, Nassau-Suffolk Law Services won a court order requiring Suffolk county to pay welfare recipients as much as \$800 a month in housing allowances. The county had been paying a maximum of \$450 per month. The immediate result of the suit was to force the county to spend an extra \$1 million on housing payments when the county welfare system was already burdened with a \$51 million deficit. Officials worried that the suit would cause social services spending to explode. Social services officials also worried that by paying the rents of recipients to live in comfortable surroundings, they were removing any incentive for them to get off welfare.

See William Falk, "Challenging a Welfare Catch," *Newsday*, Dec. 27, 1991, p. 7.

### Governor Pataki Pushes New Welfare Law to Stop Legal Services Suits

In 1995, Governor George Pataki proposed a law capping shelter allowances for welfare recipients to prevent legal services from forcing the state to spend more money. Over the years, several lawsuits had been filed, including one by Nassau-Suffolk Law Services, that forced the state and county governments to double the housing allowances paid to welfare recipients. By capping shelter grants at their current levels, the law would save as much as \$50 million. Under current law, state and local governments are obligated to provide housing allowances to welfare recipients at risk of homelessness regardless of cost. However, state officials said this only encouraged individuals to fall behind in their rent. "It did not seem correct," said Pataki spokeswoman Claudia Hutton, "to encourage a system of allowing people to fall behind on rent knowing the state would ride in on a white horse and give them money." Officials singled out legal services for fostering this abuse.

See Somini Sengupta, "Homeless Advocates Rip Pataki Plan," *Newsday*, February 3, 1995, p. A19.

### Suffolk Legislators Cut Local Funding of Legal Services

Exasperated by legal services lawsuits, Suffolk County legislators voted in 1992 to bar Nassau-Suffolk Law Services from using state and local funds to sue the county. In addition to prohibiting Nassau-Suffolk from using a \$100,000 state grant to finance suits, legislators also discontinued a \$72,000 local grant for the group. Suffolk lawmakers took the step after Nassau-Suffolk had filed numerous suits against the county demanding higher welfare expenditures and opposing their efforts to reduce a \$127 million budget deficit.

See Katti Gray, "Use of State Funds to Sue County Barred," *Newsday*, June 12, 1992.

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LEGAL SERVICES  
ACCOUNTABILITY  
PROJECT  
REPORT #36  
JUNE 21, 1996

## Legal Services Abuses in New York IV

This report completes a review of how federally-funded legal aid programs in New York violate their mission of helping the deserving poor by pursuing a political agenda and representing individuals unworthy of taxpayer-provided legal representation.

### Welfare Residency Requirement Overturned

In 1994, legal services lawyers overturned a state law that mandated a residency requirement for individuals seeking full welfare benefits. The law specifically limited Home Relief benefits for persons who had lived in the state for less than six months to 80 percent of the full welfare grant. Home Relief is a state-funded program that provides assistance to individuals who are not eligible for federal aid. The legislature adopted the residency requirement to ease the financial burden on state and local governments. However, Monroe County Legal Assistance Corp. and Southern Tier Legal Services successfully argued that the law was unconstitutional because it violated the poor's right to travel.

See Cernise Anderson, "Welfare Benefit Limit Struck as Unlawful," *New York Law Journal*, May 25, 1994, pg. 1.

### Erie County Sued for Requiring Welfare Applicants to Look for Work

In 1995, Neighborhood Legal Services of Buffalo sued Erie County for adopting a "get tough" job policy that requires childless adults to look for a job before applying for welfare. Legal services claimed that Erie County was violating state laws which required the county to provide education and job training to single applicants (Welfare applicants with children are still eligible for training assistance). County officials said that the individuals represented by legal services in the suit had actually turned down jobs the County found for them. Said one official: "We certainly don't feel we're asking too much to require someone...to look for work before they apply for welfare." Neighborhood Legal Services was forced to drop the suit in January, 1996 after the state legislature passed a law eliminating the requirement that local governments provide job training to adult welfare applicants without children.

See Matt Gryta, "Judge Urges Accord," *The Buffalo News*, May 18, 1995, pg. 4.

### Buffalo Legal Services Group Sues for Higher Welfare Payments

In 1995, Neighborhood Legal Services of Buffalo filed a lawsuit in an attempt to force Erie County and New York State to pay higher shelter grants to welfare recipients. Erie County currently pays between \$205 to \$215 a month to welfare recipients who need assistance with rent payments. However, legal services contends that the allowance is too low and should be increased to \$450. The increase was estimated to cost Erie County and the state an additional \$64 million a year. County officials argued that the suit was unnecessary because the women represented by legal services, supposedly at risk of eviction, had not even applied for available public housing. In addition, officials said that thousands of other welfare recipients in the county had no problem living within their welfare budgets. Legal services groups in other parts of the state, including Nassau-Suffolk on Long Island, won similar suits forcing additional welfare expenditures. To stop the costly litigation, Governor George Pataki has introduced legislation to more or less freeze shelter allowances at their current levels.

See Matt Gryta, "Two on Welfare Lose Legal Plea," *The Buffalo News*, February 20, 1995, pg. 5.

### Legal Services Defends Tenants in Drug-Related Evictions

Neighborhood Legal Services of Buffalo is currently representing six public housing tenants who are being evicted because of family members' involvement in illegal drug activity. For two years, the Lackawanna Municipal Housing Authority has followed a strict lease policy that holds tenants responsible for the illegal activities of relatives or guests. Lackawanna, like housing authorities elsewhere, believes that the most effective way to combat crime is to evict tenants who allow relatives or visitors to engage in such behavior. However, Neighborhood Legal Services says that evicting tenants not directly charged with crimes violates their rights. "And what about the rights of the other tenants?," rejoins Charles Barone, Executive Director of Lackawanna. "They have the right to privacy and to not have people pounding on the doors at 2 a.m. looking for drugs." In addition, says Barone, President Clinton's recent endorsement of a "one-strike-and-you're-out" policy for public housing residents who commit a crime is a clear endorsement of Lackawanna's eviction policy.

See Tom Ernst, "Eight Tenants Face Eviction," *The Buffalo News*, May 25, 1996, pg. 5C.

### New York City Lawmakers Battle With Legal Services

This year, several Democratic members of the New York State Assembly sent a letter to Assembly Speaker Sheldon Silver complaining of legal services political advocacy and requesting a review of how state funds for legal services are being spent. The letter was sent by Queens Assemblywoman Nettie Mayersohn (D-Flushing) and co-signed by 21 Democratic colleagues. In the letter, Mayersohn complained that Brooklyn Legal Services, an LSC grantee, had overstepped its mission of helping the poor by getting involved in highly political disputes between feuding ethnic groups. Mayersohn was referring in particular to BLS's two-decade long representation of Hispanics in the Williamsburg section of Brooklyn who have been involved in a bitter and contentious rivalry with Hasidic Jews over housing. Mayersohn and other Assembly members have long been critical of legal services political advocacy and its attempts to keep drug dealers in public housing. Said Assemblyman Jules Polonsky (D-Coney Island), "Some are wondering, when budgets are tight, [whether] we want to support legal services that give priority to drug dealers and that cross the line in advocating one side of a community against another."

See Laura Williams, "Pols Go To Battle With Legal Aid Group," *Daily News*, March 1, 1996, pg. 1.

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LEGAL SERVICES  
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REPORT #37  
JULY 9, 1996

## Legal Services Abuses in Texas

Federally-funded legal services programs in Texas violate their mission of helping the deserving poor by engaging in illegal political advocacy and representing accused criminals.

### Legal Services Championed Sandinista Cause in the '80s

One of the most famous cases of legal services political advocacy occurred in 1988 when Texas Rural Legal Aid (TRLA) sued the federal government for trying to stop a protest group from transporting supplies to the Sandinista government in Nicaragua. The "Veterans Peace Convoy," a loose-knit group of U.S. veterans, attempted to transport food, medicine and trucks to Nicaragua despite the fact that the country was under a U.S. trade embargo at the time. After the convoy was blocked at the border by customs officials, TRLA successfully sued to allow the food and medicine to proceed. Because the case was so blatantly political and none of the plaintiffs were even eligible for legal services representation, the LSC cut \$150,000 from the group's \$4.3 million budget. However, the Corporation was later forced to restore the money so that TRLA was never effectively sanctioned for the illegal action.

See Dawn Weyrich, "Funds Cut for Legal Group," *The Washington Times*, May 18, 1990, pg. A5

### Bail Bondsmen Sued for Apprehending Fugitive

East Texas Legal Services is currently suing a bail bond company for allegedly violating the civil rights of a fugitive they arrested for missing a court appearance. The man in question, Brian Landry, was arrested in Lafayette, Louisiana and charged with felony theft. He then entered a bail agreement with A-Able Bonding. Like all bail agreements, Landry posted bail on the promise that he would show up for court. However, Landry left town and missed his court appearance. After discovering that he was living in Port Arthur Texas, A-Able bondsmen promptly drove to Port Arthur, arrested him without incident and transported him to the Lafayette Parish Jail. It was then that East Texas Legal Services sued A-Able claiming that they violated Landry's civil rights. Legal services argued that Landry was falsely imprisoned because the bail bondsmen had no right to arrest him even though he was a "fugitive from justice" and the law clearly allows bail agents to arrest such individuals. While a U.S. Appeals Court dismissed this part of legal services claim, the court ultimately sided with legal services because the bondsmen technically violated the law by not taking Landry before a Texas judge following his arrest. East Texas is also seeking monetary damages to compensate Landry for the "fear and emotional distress caused by his arrest and detention during the two and one-half hour drive from Texas to Louisiana." The case was sent back to U.S. District Court where it is to be retried.

See *Landry v. A-Able Bonding, Inc.*, 75 F.3d 200, US App. Ct., 1996

### TRLA Tries to Stop Drug-Related Eviction

In 1994, Texas Rural Legal Aid (TRLA) tried to stop the eviction of a public housing tenant involved in illegal drug activity. TRLA's client, Maria Barajas, shared an apartment with Angel Segura at the Le Moyne Gardens Housing Project in Harlingen, Texas. Police began investigating Segura after receiving confidential information that he was selling cocaine to virtually anyone who came to the project. Segura was arrested after selling cocaine to an undercover officer behind the apartment. Segura pled guilty to the charges. The housing authority then moved to evict Barajas for complicity in her roommate's drug crimes. TRLA took the authority to court claiming that they violated Barajas' right to due process by not giving her a hearing before proceeding with the eviction. A state appeals court rejected TRLA's defense as lacking merit because federal law clearly allows a public housing authority to immediately evict any tenant involved in drug-related criminal activity.

See *Barajas v. Housing Authority of the City of Harlingen*, 882 S.W.2d 853, Tex. App. Ct., 1994

### Teacher Competency Test Called Discriminatory

In 1989, East Texas Legal Services helped bring a lawsuit against the Texas school system claiming that the state engaged in racial discrimination by requiring minority school teachers to take a teacher competency test. The state instituted the Texas Examination for Current Administrators and Teachers (TECAT) in the 1980s to insure that all teachers have basic reading and writing skills. East Texas filed suit on behalf of four black school teachers who lost their jobs after failing the test. Legal services argued that the passing score was deliberately set to insure that a disproportionate number of black teachers failed. As evidence, legal services cited statistics which showed that minority teachers failed the test at higher rates than whites. However, in 1993 a U.S. Appeals Court rejected all the claims because of the insignificant disparities in the pass rate. It seems 99.75% of white teachers passed the test as opposed to 95.5% of black teachers. The court held that a 4 percentage point disparity was insufficient to prove that the state was using the TECAT to deliberately reduce the number of minority teachers.

See *Frazier v. Garrison*, 980 F.2d 1514, US App. Ct., 1993

### Dallas Ban on Public Sleeping Challenged

In 1995, Legal Services of North Texas encouraged homeless people to sue the city of Dallas for enforcing a ban on sleeping in public. After the city began issuing citations in the fall, homeless advocate John Fullinwider protested the measure by camping out downtown. Legal services assisted Fullinwider by helping him prepare a form that homeless people could use to file suit against the city. Noting that free shelters were available to the homeless, Mayor Ron Kirk called it irresponsible for activists to encourage the homeless to sleep in the winter weather.

See Laura Griffin, "Homeless Advocate Protests Public Sleeping Ban," *The Dallas Morning News*, Dec. 19 1995, pg. 28A

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Mr. GEKAS. Thank you. We will return to you during Q and A. Mr. Londen.

**STATEMENT OF JACK W. LONDEN, ESQ., SAN FRANCISCO, CA**

Mr. LONDEN. Thank you, Mr. Gekas and the committee, for allowing me to appear here today.

I have submitted prepared remarks, and I appreciate that they will be made a part of the record.

Mr. GEKAS. Without objection.

Mr. LONDEN. I am a lawyer in private practice in San Francisco and the chair of my law firm's pro bono services committee. We are very active. Over my tenure we have done 500,000 hours of pro bono work in 16 years. I personally have spent more than 5,000 hours of my time representing poor people with their legal problems on a pro bono basis. I have served on committees in San Francisco and am on the ABA's Standing Committee on Lawyers' Public Service currently.

In the State of California, my primary interest is in helping low-income people get help from private lawyers. The idea that that is a solution to the problem that makes it unnecessary for there to be legal aid programs with the present levels or higher levels of Federal support is not correct in the world in which poor people live and pro bono lawyers practice.

I have also served on the State planning process over the past 6 months, and as part of that process I have interviewed two-thirds of the programs, program directors, from the recipients of Federal funding in California. I have done this since the restrictions went into effect on April 24. I have talked to directors in May and June about the subject of what they are doing to offer services now.

I can tell you that far from the claim that there is no change in the program, there are great changes in the programs in order to accommodate both the reduction in staff and funding and the directives that the Congress has made.

Chairman Gekas, I have heard you several times. I was at the Senate hearings at which you appeared last summer to talk about a vision of legal aid for the poor in which individual people get help for their individual problems, nonpolitical problems like domestic violence, housing, homelessness being threatened, bankruptcies that can be negotiated and either averted or handled well or poorly, the problems of student loan rip-offs.

These are real problems for real people. They may not be global or law reform, but they are very important. And I can tell you that from everything I have seen, that vision of legal services is being conformed to by the programs today. That is a viable role. There are other important things to do and others will continue to do them, but the role of helping individual people with individual problems deserves at least the level of funding that the Federal Government is giving it.

I can use as a primary example of this the very program that is singled out as one of the chief tar babies of criticism, and that is Legal Aid of Santa Clara County and the new program. Like Congresswoman Lofgren, I have worked with Legal Aid of Santa Clara County for years. They are a good program; they have done valuable service. They were given the choice by the Congress, accept re-

strictions on Federal money or turn down the money. They had a vigorous debate. It was a tough decision. They have done much good work. They would have to break promises to courts and clients in order to accept the money and the restrictions.

In that debate, things were said that have been quoted, and those things were intemperate, and they do not prove what has happened since. The people who made those statements are not with the recipient program. They believed that the restrictions were not the way they wanted to go, and so that program turned down the money.

The present recipient is called Community Legal Services of Santa Clara County. I have their brochure here because it is impressive. This brochure is given to their clients. When you open it, you see this advice: "Please be aware that Community Legal Services cannot accept the following types of cases," and there is a list from fee-generated cases to legislative advocacy, grassroots lobbying, class actions, and undocumented persons.

What this program does is four clinics a week for people who want to represent themselves in housing problems. In Santa Clara County the cost of a two-bedroom apartment, minimum, is \$900. AFDC or minimum wage will not cover that.

Legal Aid helped 8,000 people with housing last year. Community Legal Services runs two clinics a week on family law problems and domestic violence. They run a clinic on public assistance and consumer law problems. They run hotlines on which you get help right now when you call and counseling and advice. They do represent people, but they do no impact work and no class actions, and this is the program that is being described as a problem.

[The prepared statement of Mr. Londen follows:]

PREPARED STATEMENT OF JACK W. LONDEN, ESQ., SAN FRANCISCO, CA

Mr. Chairman and Members of the Subcommittee:

I am Jack Londen, a lawyer in private practice in San Francisco. I am the chairman of my law firm's pro bono services committee, and I have worked myself or supervised pro bono work with a number of legal services programs over the past sixteen years. I am a member of the American Bar Association's Standing Committee on Lawyers' Public Service Responsibility. In California, the State Bar and other organizations have established a planning process to involve legal aid programs, pro bono programs, private lawyers, bar associations, and other interested groups in the restructuring of legal assistance to low income people. I am a member of the Steering Committee for the State Planning Process.

I am prepared to address the question of compliance by recipients of grants from the Legal Services Corporation with the requirements and restrictions the Congress enacted in HR 3019, the Omnibus Continuing Resolution.

**RECIPIENTS OF LSC FUNDING ARE PROVIDING THE TYPES OF LEGAL ASSISTANCE CONGRESS INTENDS TO SUPPORT AND COMPLYING WITH DIRECTIVES ON PROHIBITED ACTIVITIES.**

As part of the California State Planning process, our steering committee members have interviewed representatives of legal aid programs, pro bono programs, and others to learn about changes to the civil legal assistance being offered to low income people this year in our state. I personally have participated in interviews of the executive directors of the majority of LSC recipient programs in California.

From this perspective on legal aid in the nation's largest state, I can say that LSC recipients are bearing out the Congress' vision of the proper role of civil legal aid for the poor. The dozens of programs and hundreds of lawyers and other professionals in California legal aid programs understand and believe in the positive role of providing a helping hand to an individual eligible client who has a legal problem affecting a necessity of life. Assistance on individual issues of housing and preventing homelessness, preserving families and domestic peace and safety, resolving debtor/creditor disputes fairly and efficiently, and increasing the ability of clients to help themselves—all these are not only goals but accomplishments of programs helping tens of thousands of people in California every month.

Although there was great controversy about the need for restrictions aimed at "law reform" matters, the restrictions have been enacted into law. There is no controversy about the continued importance and value of doing what the Congress wants legal aid programs to do: programs are continuing and even increasing, despite funding cuts, assistance to individual clients with their individual legal problems

Programs are also complying with what Congress has told them not to do. Many recipients of Legal Services Corporation grants have gone through wrenching changes to achieve compliance with the new restrictions. Commitments made to clients and to courts in the past must be, and are being broken where that is necessary as part of recipients' withdrawal from newly-restricted ongoing cases. Where, in the past, some programs (especially some in populous, urban counties) used class actions and legislative advocacy to try to help large numbers of people, today many of those same programs have developed new self-help clinics and telephone hotlines to reach large numbers of people. With these methods programs are becoming more efficient in providing individual service to eligible clients.

Even though more than a month remains until the final deadline, programs have largely complied with the directive to disengage from class actions and representation of clients served in the past with non-LSC funds. Contrary to the assumptions of some critics, the number of class actions maintained by LSC recipients was not large: I believe the total was closer to 100 than 200 ongoing class actions in California. This is a small number, indeed, for a group of programs that assisted, in the aggregate, hundreds of thousands of individual clients last year alone.

**COMMUNITY LEGAL SERVICES, THE SANTA CLARA COUNTY  
LSC RECIPIENT, IS A MODEL OF THE TYPE OF  
PROGRAM CONGRESS MEANT TO FUND.**

The legal aid program in Santa Clara County, California, has been singled out as an example of noncompliance. The opposite is true.

In Santa Clara County, the current LSC funding recipient is Community Legal Services, Inc. I have interviewed its executive director, reviewed its organizational documents and other records, and inquired about its service programs. From everything I have learned, Community Legal Services is a program that, from its inception, has been built to fit exactly the goals and requirements that Congress enacted in April of 1996.

Community Legal Services does service work for individual clients and legal education through community organizations. It does no impact or law reform cases. Indeed, much of its efforts are spent counseling individuals about how to stand up for themselves in legal proceedings. It offers many more hotline services than were previously available in Santa Clara County, on topics including landlord/tenant disputes, fair housing laws, public assistance issues (but certainly not, given the self-help focus, "welfare reform"), family law, and debt enforcement matters. Community Legal Services also runs clinics, refers low income individuals to private pro bono lawyers, and uses staff attorneys to represent individual clients. It estimates that it will assist more than 4,500 eligible individuals in 1996. Community Legal Services' programs conform not only to the negative restrictions but also to the positive agenda for what problems legal aid programs should be making their exclusive focus.

Community Legal Services has never in its brief history had policies contrary to the new restrictions. It prominently announces in its informational literature distributed to clients that:

Be aware that Community Legal Services cannot accept the following types of cases: 1. Fee generating cases. . . . 7. Legislative advocacy. 8. Grassroots lobbying. 9. Class actions. 10. Undocumented persons (immigration).

The critics of Santa Clara Legal Aid have pointed to no basis—and I know none—for concluding that Community Legal Services has in any way failed to comply with the new statutory restrictions on LSC recipients' activities.

In discussing compliance, critics of continuing federal funding have paid a great deal of attention to the Legal Aid Society of Santa Clara County. Santa Clara Legal Aid was a recipient of LSC money before 1996, but it has never received any of the newly restricted LSC grant funds. When Congress imposed the new restrictions, it allowed all recipients to choose between accepting the new restrictions and rejecting the federal money. Santa Clara Legal Aid chose the latter. It makes no sense to describe this choice as “evading” the restrictions—no more sense than saying that Santa Clara Legal Aid “evaded” the federal grant funds.

It was a difficult decision in 1995 to decline the federal money, and the Board of Santa Clara Legal Aid was deeply divided about it. Some Board members believed very strongly in not abandoning many commitments to work that Congress proposed to restrict. Others believed equally strongly that poor people in the county need help that could be provided only by accepting the federal grants and complying with the new restrictions. After the majority of the Board took the first position, the

members in the minority resigned from the Santa Clara Legal Aid Board to participate as part of the Board of the new Community Legal Services, Inc.

As in many debates on deeply disputed issues, some participants made strong statements. Among the Santa Clara Legal Aid Board members who favored continuing the work that Congress proposed to restrict, two members made statements that have become the focus of considerable attention. The first thing to note about these statements is that although they are quite colorful, they do not and could not prove anything about whether any restrictions have been violated or evaded. To the contrary, the quotes date from months before the restrictions were enacted. Santa Clara Legal Aid declined to accept any restricted funds. And the Santa Clara Legal Aid Board members who made the statements have had no affiliation with the new organization during any time when Community Legal Services has received any federal funding.

Community Legal Services is not the alter ego or alternative corporation of Santa Clara Legal Aid. The services they offer are different, as are their program priorities and client eligibility standards. The two have no Board members in common. They have no common employees. They share no independent contractor services (other than a part-time independent bookkeeper for which each pays an hourly fee to an accounting services agency). There are no contracts between the two programs other than a lease of space to Community Legal Services in the building that Legal Aid bought years before it reduced in size. The new program pays the same rental rates as other tenants, and its offices are entirely separate from those of Santa Clara Legal Aid. Aside from the rent, no money from one program flows to the other.

In short, this new program is separate and independent from Santa Clara Legal Aid. Community Legal Services is built on the positive model that even critics of the Legal Services Corporation have embraced: a legal aid program helping individual clients with legal problems that—from a lawyer's perspective—might be considered straightforward and ordinary, but to the clients are terribly significant. For Community Legal Services to be held up as an example of noncompliance would require an utter disregard of the facts.

**LSC'S MANAGEMENT HAS MADE IT CLEAR THAT  
ITS POLICY IS ZERO TOLERANCE  
FOR ANY RECIPIENTS THAT VIOLATE THE LAW.**

In the late 1980's I worked as pro bono counsel for legal services programs on dealings with the management of the Legal Services Corporation. Those dealings were characterized by some cooperation and some contentiousness on both sides.

During the past several months, I have been present as the moderator of a panel at which the current LSC management announced policies for enforcing the restrictions that were then only a week from enactment. I have reviewed new regulations and LSC correspondence regarding questions arising under established regulations.

My observation is that the current management's stance toward enforcement of restrictions is tougher and less tolerant than in the 1980's. This reflects not only the additional substantive restrictions Congress has added recently, but also a less forgiving procedural scheme. In the 1980's, applicable procedures provided due process rights to recipients before

denial of refunding. LSC's present management understands current law as requiring denial of refunding under competitive bidding if a recipient commits a material breach of its grant contract or a violation of restrictions on permitted activity.

LSC's management has communicated a clear message that I would describe as "zero tolerance" of violations. That message is accompanied today by rigorous and demanding inquiries where questions arise. These developments along with the expanded role of the Office of the Inspector General have created an enforcement environment in which violations of law by LSC recipients—if any occur—are significantly more likely to be punished than at any time in the past sixteen years.

**WITH NEW COMPLIANCE REQUIREMENTS JUST ENACTED,  
THERE IS NO BASIS AT THIS TIME FOR CONCLUDING THAT  
RECIPIENTS WILL NOT ACT AS CONGRESS INTENDED.**

Congress has enacted no mandate for the end of legal aid to America's low income people. To the contrary, despite vigorous debate about funding sources and levels, there remains a high level of support for the positive role legal aid lawyers can play in helping individual eligible clients with individual legal problems involving the necessities of life.

Critics have offered no evidence with any substance to support the assertion that LSC grant recipients are not now in compliance, or will not in the future comply, with the restrictions Congress has imposed. Especially in light of the "zero tolerance" response that LSC's management has promised to any actual material violations that may occur, concerns about recipients' noncompliance simply have no basis.

Mr. GEKAS. We thank the gentleman, and we will return to him, I promise you.  
Ms. Tucker.

**STATEMENT OF ALLYSON TUCKER, EXECUTIVE DIRECTOR,  
INDIVIDUAL RIGHTS FOUNDATION, LOS ANGELES, CA**

Ms. TUCKER. Good morning, Mr. Chairman, members of the subcommittee.

I ask that my full statement be made for the record also, and I will summarize what I am saying this morning.

Mr. GEKAS. Without objection.

Ms. TUCKER. I am director of an organization called the Individual Rights Foundation, and what we do is put pro bono lawyers together with cases. We also have a very large program called the pro bono publico project, and we study what lawyers are doing in this country pro bono.

A good part of our time is spent observing what lawyers in all different segments are doing. I am here to say that there are lawyers out there ready and willing to offer their time, and they are doing so. The advocates for continued funding for the Legal Services Corporation constantly claim that, if the LSC is abolished, poor Americans will have nowhere to turn for legal assistance. They have misled the public and many Members of Congress into believing that LSC is an apolitical organization that simply exists to provide equal access to the law.

Others in this room have shown that this is unsubstantiated, that the LSC has a very definite agenda, and that agenda takes precedence over representing the legitimate legal needs of low-income Americans. I am, however, not here to discuss the LSC's political agenda but to bring you the good news that the attorneys, individuals in cities across the country are donating their time and money to meet the legal needs of the poor.

If the LSC were abolished tomorrow, the poor would still have literally hundreds of places to turn for legal advice and assistance. Pro bono legal assistance is so widespread that many lawyers who wish to donate their time actually have difficulty finding needy clients, and that is where we come in. They call us and we try to find clients for them, actually.

Private and local legal support is not new. Before the rise of government-sponsored legal aid in the 1960's and the creation of Legal Services Corporation in 1974, there existed more than 200 private legal aid societies, most of which received no government support. These legal societies, which predated federally funded legal services by almost 90 years, received 60 percent of their funds from their communities, 15 percent from bar associations, and the remainder from businesses and individuals.

These legal societies, with the help of private attorneys working pro bono publico, or in the public interest, were largely able to meet the needs of the poor in their communities. Despite the competition from Legal Services Corporation, many of these legal societies are still in existence, and they perform many of the same tasks that the Legal Services Corporation performs at a fraction of the cost.

For example, in Indianapolis the Indianapolis Legal Aid Society was founded in 1941 and last year received all of its \$458,000 budget from private sources. They handled 6,079 cases in 1994 at a cost of \$75 per case. By comparison the Legal Services Organization of Indiana received 84 percent of its \$4.5 million from the LSC and 12 percent from other government sources.

This government-funded program handled 12,000 cases in 1994 at a cost of \$367 a case; more than five times the cost per case of the private Legal Aid Society.

To summarize, there are over 500 foundations offering services pro bono across the country, and we are just one of a network of these groups across the country. Large law firms, as we heard from Mr. Londen, are also going out of their way to demonstrate their commitment to pro bono work. One firm, Skadden, Arps, set up a \$10 million public interest fellowship program to fund 25 public interest fellowships a year. Many large law firms and small law firms and medium sized law firms make generous contributions to pro bono, offer legal services, as well as meeting space word processing, and more.

The judiciary is also involved in pro bono, and many courthouses in California and other States offer special services for lawyers doing pro bono work. Across the country judges, in places like here in Washington, DC, call up saying we are going to need to get our people involved, legal services is being cut, let us get people together to meet the need. In Washington you had 90 percent of the large law firms to respond to the call of the judiciary to get involved in pro bono work.

Many states offer mediation and arbitration free of charge or reduced charge to meet the needs of the poor. The bar associations are picking up the slack and doing a lot of work on pro bono. The State bar of California uses interest on client trust accounts to fund pro bono projects in the State. This funds provides legal services to over 100 organized pro bono programs. Through this program, over 1 million hours of work are contributed each year by private attorneys. The State bar intends to increase this grant by 3 million this year, and the State bar of California waives dues payments to retired members who donate time solely for pro bono services.

In Los Angeles last year alone, 2,000 lawyers accepted cases from public counsel and pro bono programs for indigent clients sponsored by the Los Angeles County Bar Association and the Beverly Hills Bar Association. Public counsel has a budget of \$1.8 million and represented nearly 7,000 cases last year. Many local bar associations also promote pro bono work by dues checkoffs for contributions to pro bono programs, while others contribute directly by offering free rent, equipment, staff and other in-kind contribution. The American Bar Association encourages pro bono activity.

And the list goes on and on. Similarly, law schools have been encouraged by both the ABA and the judiciary to openly discuss pro bono activities. There are a lot of lawyers and pro bono law students across the country volunteering their time at pro bono programs to help serve the indigent.

[The prepared statement of Ms. Tucker follows:]

PREPARED STATEMENT OF ALLYSON TUCKER, EXECUTIVE DIRECTOR, INDIVIDUAL RIGHTS FOUNDATION, LOS ANGELES, CA

We are here today to determine the future of the Legal Services Corporation (LSC). Advocates for the continued funding of the LSC constantly claim that if the LSC is abolished, poor Americans will have no where to turn for legal assistance. They have misled the public, and many members of Congress, into believing that the LSC is an apolitical organization that simply exists to provide access to the law. Others in this room will prove that this claim is wholly unsubstantiated -- that the LSC is has a very definite and clear political agenda -- and that agenda usually takes precedence over representing the legitimate legal needs of low-income Americans.

I, however, am here today not to discuss the LSC's political agenda, but to bring you the good news that attorneys and individuals in communities across the country are donating their time and money to meet the legal needs of the poor. If the LSC were abolished tomorrow, the poor would still have literally hundreds of places to turn for legal advice and assistance. In fact, pro bono legal assistance in this country is so widespread that many lawyers who wish to donate their time actually have difficulty finding needy clients. The purpose of my testimony here today is to outline a few of the thousands of places that the poor can turn for legal assistance.

Private and local legal support is not new. Before the rise of government sponsored legal aid in the 1960's and the creation of the Legal Services Corporation (LSC) in 1974, there existed more than 200 private legal aid societies, most of which received no government support. These legal societies, which pre-dated federally funded legal services by almost 90 years, received 60 percent of their funds from their communities, 15 percent from bar associations, and the remainder from individuals and businesses. These legal societies, with the help of private attorneys working "pro bono publico" or in the public interest, were largely able to meet the legal needs of the poor in their communities.

Despite the competition from the Legal Services Corporation (LSC), many of these legal societies are still in existence. These private legal services perform many of the same tasks as the LSC but often at a fraction of the cost. For example, the Indianapolis Legal Aid Society (ILAS) was founded in 1941 and last year received all of its \$458,000 budget from private sources. The ILAS handled 6,079 cases in 1994 at a cost of \$75 per case. By comparison, the Legal Services Organization of Indiana (LSOI) received 84 percent of its \$4.5 million budget from the LSC and 12 percent from other government sources. The government funded LSOI handled 12,347 cases in 1994 at a cost of \$367 a case, more than five times the cost per case of the private Legal Aid Society.

There are also over 1200 foundations offering the services of pro bono attorneys. The Individual Rights Foundation is just one organization that has a network of over 450 individual attorneys nationwide that provide pro bono assistance to people who cannot afford attorneys. The Federalist Society has an equally impressive network of pro bono attorneys. Many of the attorneys in these networks are sole practitioners who are dedicated to helping needy individuals in their communities. The numbers of organizations that exist to help the poor with legal services are on an upward trend. In 1984 in California, for example, there were only 49 organizations that provided pro bono

legal assistance. Today, there are well over 100 such organizations. While some of these are LSC grantees, many of them are not.

### **Large Law Firms**

Law firms have also been going out of their way to demonstrate their commitment to pro bono work. The National Association for Public Interest Law publishes a yearly guide entitled "Law Firms and Pro Bono." The 1995-96 guide details the pro bono work of 26 large law firms throughout the country. One unique program involves the New York law firm of Skadden, Arps, Slate, Meagher & Flom. Skadden, Arps set up an unprecedented \$10 million dollar public interest fellowship program to fund 25 public interest fellowships a year. As of today, 18 of the original 25 fellows still work in public interest law. As Skadden name partner Joseph Flom put it: "it was the best money we ever spent." Similarly, *The American Lawyer* publishes a yearly survey of pro bono activities of the top 100 law firms in the country. In 1994, the top 100 law firms reported doing a total of 1,513,244 hours of pro bono work. This number is in spite of the fact that 13 of the top 100 law firms did not participate in the *American Lawyer* survey. Nonetheless, all of the firms did state that they did in fact do their share of pro bono work in their communities. Many large law firms support pro bono by adopting pro bono policies that offer billable credit for pro bono work.

Large law firms also support pro bono programs in other ways. Many large firms make generous contributions to pro bono programs, offer legal services, as well as meeting space, word processing and printing services, and more.

### **Activities by the judiciary**

Responding to a need in their community, local judges in Washington D.C. organized a meeting for managing partners of the city's law firms to discuss the need for pro bono assistance to the poor. Over 90% of the large firms as well as many small and medium size firms responded to the call. The results were overwhelming -- the supply of local lawyers, by several accounts, exceeded the demand.

Similarly, many courthouses in California offer special services for attorneys doing pro bono work. Some of these services include special accommodations or preferences when it comes to calendar assistance or scheduling. Some courts engage in recruitment activities for pro bono attorneys, where the judges will send recruitment letters to lawyers encouraging them to do pro bono work, as well as holding recognition dinners for those who show an outstanding commitment to pro bono. Many courts also hold pro bono clinics and offer free space, furniture, and parking for unlawful detainer and domestic violence projects. These projects are actually operated out of the courthouse and judges will often refer unlawful detainer defendants or parties who need assistance with matters concerning domestic violence to the attorneys at the courthouse.

Many states offer arbitration and mediation services free of charge, or at a reduced charge in order to meet the needs of the poor. According to the National Institute for Dispute Resolution, 27 states have formally incorporated various ADR methods in their courts systems. This is up from just 10 in 1980. Additionally, the National Association for Community Mediation has 150 programs in 37 states. In Los Angeles County, the court has what it calls low cost "baseball arbitration" where the poor can have their cases heard without an attorney using the same rules that exist in baseball arbitration disputes. Other programs include judiciary-initiated reforms of courthouse procedures that make resolution of family-rated conflicts easier, reducing the need for an attorney in some cases.

### **Bar Associations**

Law firms and individual attorneys are not the only ones doing pro bono work. The State Bar of California uses the interest on client trust accounts to fund pro bono projects in the state. This fund helps provide legal services for over 100 organized pro bono programs. Through this program, over 1 million hours of work is contributed each year by private attorneys. This successful private program should serve as a model for other states. The state bar intends to increase its grants by almost \$3 million dollars this year. The State Bar of California also waives its dues payments for retired members who donate time solely to pro bono services.

In Los Angeles last year, 2000 lawyers accepted cases from Public Counsel, a pro bono program for indigent clients sponsored by the Los Angeles County Bar Association and the Beverly Hills Bar Association. Public Counsel has a budget of \$1.8 million and represented nearly 7,000 clients last year. Public counsel enlists the help of 11 paid attorneys, 1,900 pro bono lawyers, and 800 law students. Many local bar associations promote pro bono work by dues check-offs for contributions to pro bono programs, while others contribute directly by offering free rent, equipment, staff, or other in-kind contributions. Other examples of the unique opportunities present for pro bono are exemplified by the Beverly Hills Bar Association's programs entitled "Ask A Lawyer," where young lawyers staff information booths at community shopping malls, and the "Blue Car Project" where lawyers lecture high school students on everyday legal matters by using the analogy of a car (i.e., purchase agreements, sales contracts, insurance, repairs, financing, etc.).

The American Bar Association also encourages pro bono activity. In the 1980's the American Bar Association passed ABA model rule 6.1 that instructed that all attorneys shall render unpaid public interest legal service. In 1988, the ABA House of Delegates passed a resolution asking all attorneys to devote at least 50 hours each year to pro bono work. A look at the ABA directories of pro bono programs demonstrates this rise in pro bono activity. In 1984, there were only 300 entries in the ABA's directory of pro bono programs. By 1993 the directory boasted over 900 entries.

### **Law Schools**

The American Bar Association has encouraged law schools and law students to openly discuss the pro bono activities at many of the nation's law firms. In 1988, the Legal Services Section's Standing Committee on Legal Services to the Poor sponsored a "Just Ask" program to encourage law students to ask about firm's pro bono policies at on campus interviews. The nation's law schools have also launched a campaign to promote pro bono requirements in law schools. Six law schools in the United States have mandatory pro bono programs. Most others offer credit for externships for working in pro bono programs, and many law schools have Public Interest Law Foundations that offer grants for summer work in pro bono organizations. Other law schools have specific clinics where pro bono is the main focus of a particular program of study. For more information on this topic, see "Pro Bono In Law Schools," published by the American Bar Association and the National Association of Public Interest Law.

The current job market, while not necessarily good for young lawyers, is good for pro bono. Many young lawyers who find employment at large and medium sized firms difficult to obtain, work in pro bono programs for little or no money simply to obtain marketable experience. Pro bono programs are not the only beneficiaries of this situation. Courts, district attorney's offices and public defender's offices receive a great deal of assistance from unpaid "externs" who spend summers working for these government offices simply for the work experience opportunities they offer. The number of unpaid hours law students spend working for county government offices is so large as to be almost unmeasurable.

### **Other Sources of Pro Bono**

Lawyers offering pro bono services have recently began to come from unexpected places. Many corporations are now encouraging attorneys in their corporate law departments to perform pro bono legal work. In some cases, such services are actually a matter of company policy. Government attorneys are also getting into the pro bono act. California has developed policies that allow government attorneys to do pro bono work when there is no apparent conflict of interest. In many rural areas, government attorneys make up the bulk of practicing attorneys in the area. Many poor people could be further served if other federal, state and local government offices would reexamine their pro bono policies to allow government attorneys to do pro bono work.

### **Fee Shifting Statutes**

Another way that pro bono services is being funded is throughout the various fee shifting statutes in effect throughout the federal and state systems. One example is 42 U.S.C. 1988 that provides prevailing attorneys fees for successful civil rights action. Many states have parallel statutes or case law that provides prevailing party attorney's fees for "conferring a benefit on the public." Each year both federal and state government agencies pay countless millions of dollars for fees to pro bono attorneys who wage successful civil rights suits against the government.

## Conclusion

In an effort to exaggerate its own importance, the LSC understates the amount of pro bono activity taking place in the nation. In May, 1995 LSC Chairman Douglas Eakeley and LSC President Alex Forger testified before Congress that 130,000 attorneys do pro bono work. This figure however, only counted attorneys formally enrolled in pro bono programs affiliated with LSC grantees. The actual numbers of attorneys doing pro bono work are much higher. A 1991 study by the State Bar of California reported that 64 percent of its members (all practicing attorneys in the state) were engaged in some form of pro bono work. Adopting a conservative figure of 40 percent there are about 358,400 of the 896,000 attorneys in the country engaged in some form of pro bono work. This number is between two and three times the number cited by the LSC. Other estimates go much higher. The *National Review* reports that there are over 500,000 lawyers doing nearly 25 million hours of pro bono work at an estimated value of \$3.4 billion. This is five times the number of hours worked by LSC attorneys and more than eight times the LSC budget.

Another reason why the LSC severely underestimates the amount of pro bono in the country is because most pro bono work goes largely unnoticed. This is the type of work done by everyday lawyers for poor and/or indigent acquaintances on their own initiative. When asked whether they would rather work in a formal program or on their own initiative, 58 percent of lawyers in New York who did pro bono work stated that they preferred to work on their own as opposed to working in an organized program. In California, only 16% of the lawyers surveyed stated that they did pro bono work through some "organized program." However, 35% of California attorneys said that they did pro bono work on an ad hoc basis, and 35% gave free legal services to religious, educational, civic, or other community or charitable groups or organizations. It appears that private pro bono, done on an ad hoc basis, is really the manner in which unmet need in the justice system is met. In California alone, 17,000 attorneys donated almost one million (911,000) hours to low income clients on an ad hoc basis for the last year that such figures are available (1991).

The case for favoring private pro bono programs over government funding of the LSC is most aptly made by long time judicare advocate Samuel Jan Brakel:

What point or purpose is there in having a separate legal-aid establishment for the poor, staffed overwhelmingly by young and inexperienced lawyers, armed with a socio-political agenda and a whole folklore about what poor clients want, need, or what is good for them? Why patronize low-income people in this way? Why deprive them of the diversity of views, practices, and talents that abound in the private sector? Why deny them the right to choose their own lawyers? In no other area of social or human service that I am aware of have we made such a concerted, almost perverse, effort to avoid using the resources already existent and available.

Mr. GEKAS. We thank the lady for her testimony. We will return to her as well.

We now yield out of order, out of special request to the gentleman from Rhode Island, the ranking minority member.

Mr. REED. Thank you, Mr. Chairman. And thank you for your consideration. I have to leave shortly. Just a few comments.

Professor Rounds, Greater Boston Legal Services is no longer a recipient of Legal Services Corporation funds. So your comments with respect to Greater Boston Legal Services at this moment are not about a current grantee of Legal Services Corporation.

And I think also, I am told that GBLS gets widespread support now in its nonlegal service mode. Governor Weld apparently signed into law increased funding for Greater Boston Legal Services. So your comments might have had some effect a year ago, but today we are talking about a nonlegal service entity; is that correct?

Mr. ROUNDS. Yes. But my point is that, although it is not now receiving Federal funds, Greater Boston Legal Services is nonetheless in the business of engaging in political action indirectly with Federal money. Because the——

Mr. REED. How do you——

Mr. ROUNDS. Allow me to finish, please. This is because the Massachusetts Legal Assistance Corporation, which does receive Federal funds, is basically coordinating the shifting of entities. The collateral organizations are essentially affiliated with the Greater Boston Legal Services. So it is a shell game for all intents and purposes.

Mr. REED. Well, that makes every private attorney who is doing pro bono in some way affiliated with the Federal Government because it——

Mr. ROUNDS. No, that has nothing to do with it.

Mr. REED. All right. You have a rather expansive conspiracy theory.

Mr. ROUNDS. My information, in part, comes out of the literature of Massachusetts Legal Assistance Corporation itself. It does not come out of thin air. I take it from the literature of the Massachusetts Legal Assistance Corporation and the Boston Globe, and from original sources such as correspondence between Greater Boston Legal Services and the Boston City Council. See exhibit F to my prepared remarks, for example.

Mr. REED. Mr. Boehm, you indicated there are still ongoing activities that are precluded from the new rules that went into effect, and you make specific reference to continuation of assistance for evictions with drug-related crimes. Do have you evidence of that?

Mr. BOEHM. Sure, I would be happy to provide them for the committee.

Mr. REED. You mentioned case selection, that the Legal Services Corporation has never represented home schoolers and I do have information here from the Charlottesville Albemarle Legal Aid Society that one of their attorneys who was in fact involved in Kentucky with the home school movement did on a fairly regular basis represent home schoolers.

Mr. BOEHM. I was quoting Congressman Taylor. And out of 1.6 million cases, if they found one, that is one for the good.

Mr. REED. Well, that is one more than you indicated in your testimony.

Mr. BOEHM. I was quoting Congressman Taylor.

Mr. REED. Mr. Londen, the question has come up with respect to the capacity of the private bar to absorb the work of the Legal Services Corporation. You are a member of the private bar, unlike the members on this panel and your other colleagues at that panel. Do you think the legal private bar can step up to the plate if legal services is further eroded?

Mr. LONDEN. There is no possibility that the work that is being done by legal aid programs can be replaced by private lawyers. I would just like to support that in three ways. One, the impact of eliminating these programs is going to eliminate the pro bono programs themselves in the most vulnerable communities in the country.

I have been interviewing these project directors. What I have learned is that in California's rural counties there are not two programs, one pro bono program with private lawyers and another legal aid program. There is one. The pro bono lawyers in rural counties in this country work through the legal aid—the private lawyer involvement of legal aid societies and associations. If you limit some of those, some of those are one-lawyer-per-county programs. Without the Federal funding, they will go out of business, and the pro bono lawyers who are willing to help people will have no place to go to meet the clients. That is the most true in the most rural communities.

The work that Ms. Tucker has talked about is work that I and others have been involved in over the past 15 years. She has used, I counted, eight examples from California. I personally have been involved in six of them, and I know the other two. My firm handles hundreds of clients a year, and we turn down as many as we handle. That is in San Francisco, and that is the best community in the country.

The private lawyers, the efforts to involve private lawyers have improved by a factor of three over the past 15 years. I think we deserve some congratulations for that. But it is not enough. It is not enough now and, without the help of the legal aid associations, it will be far less than enough.

In Massachusetts, to take that example, last year there were 38,000 hours of work done by private lawyers, but a far greater amount by legal aid lawyers; 55,000 clients. Legal aid lawyers handled 200,000 cases in California last year.

Mr. REED. Thank you, Mr. Londen. Thank you, Mr. Chairman.

Mr. GEKAS. We yield to the gentleman from Georgia, Mr. Barr.

Mr. BARR. I thank the Chairman.

Mr. Londen, I would like to commend you, and even though the figures that are in your colleague's, Ms. Tucker's, work, do not support your position, I would commend you to read her paper at your leisure. They have some fairly revealing figures as well that indicate the extent to which attorneys, I presume probably all of you here today and probably a number of attorneys, if not all of us on this panel, donate money to provide pro bono assistance through bar associations, and so forth.

So, I agree with Ms. Tucker. I have tremendous faith in the legal profession stepping up to the plate. The history of our country is such that it provides, I think, great evidence that that view will prevail, particularly in the legal profession. We have always been a country in which citizens do help each other. I think it has only been in recent years where the Government has stepped in and proactively sort of usurped that spirit that we witnessed this tremendous growth of basically an industry of the provision of legal services. And certainly your position is, Mr. Londen, that the private lawyers will not step in and do it. I happen to disagree. I have more faith in members of the bar than that.

You mentioned in your prepared remarks about this person from the Santa Clara Legal Aid Board. I think you said her remarks were colorful. That is probably somewhat of an understatement. I think that it is Elizabeth Shivell. She is quoted in the publication—the February 1996 edition of *California Lawyer*—saying, quote: “If Congress can screw people with technicalities, we can unscrew them with technicalities. That is why we are lawyers and not social workers. Two can play this game.”

I think you are probably correct in your characterization of her remarks that they do not prove one thing or another. Do you disassociate yourself from those kinds of comments and that sort of attitude?

Mr. LONDEN. Congressman, I believe that those comments do not reflect what programs are doing today. I disassociate myself and, from what I can tell, that very program, community legal services in Santa Clara County, exercises no loopholes. It is doing the kind of work that Congress intends to be done.

On the question of pro bono, I do not think that private lawyers will not step up to the line. I just have experienced that there is not enough of them. The lawyers who do the work and recruit the private lawyers to do the work are not the lawyers who are telling you that there will be enough of them. The people that are telling you that pro bono lawyers are going to come to the rescue and that will be enough are not people that do it. And Ms. Tucker recruits on one panel—

Mr. BARR. I do it. I contribute money through the bar association for the provision of pro bono services through the Georgia Bar. So there is at least one lawyer that does know what he is talking about that does contribute to it.

Mr. LONDEN. I agree with that, and I do it myself. My experience says there will not be enough help if legal aid programs are not there.

Mr. BARR. You talked about the amount of hours that you provide, and it is laudable. Have you ever been paid for any of those pro bono hours in any form?

Mr. LONDEN. That hours I am talking about are hours that we have provided—that I personally have done working on cases for poor people. In a sense I am in a fortunate situation because I get paid. I am allowed to do the work and my firm pays me. But they let me do this work. We do not get paid for that work.

Mr. BARR. OK. Ms. Tucker, I know you disagree; but is there some basis for your disagreement? I think you and I are probably in agreement that we have perhaps somewhat more faith in other

members of the bar than Mr. Londen. And I do hope that our experience, as we go through this process, and I am sure he hopes that he is wrong on it also, but could you respond to the dialog?

Ms. TUCKER. I am also an active member of the bar and also a volunteer and also pay dues to bars in two States. Basically what we found through our pro bono publico project is, A, that even with these relatively small cuts—some would say small, some people would say large—cuts to Legal Services in the last year, Legal Services has more than made up for that money in private donations. And so you already see, as it is being phased back a bit, money coming pouring in from communities for legal service to the poor.

The second thing you have seen is you have seen a much greater awareness, even the little bit of scaling back that has been done to this program of pro bono activities. When they started this program four years ago, when my foundation started, people were not real aware as they are today of pro bono legal work, both in the bar associations, as you study them, and communities.

Mr. Londen talked about poor communities, you also have people from cities. I am from Missouri and do a lot of work in Missouri. You have lawyers from St. Louis going out to the rural parts of Missouri to help meet a need for legal services in the rural areas. And so you see not just within a community but you see States and areas pull together.

So I disagree. I think that we have already seen this in the last year, the private sector meeting the need. I think we will continue to see them meeting the need in much the way that it has been in the last year, and I think it will actually increase as the awareness grows.

Mr. GEKAS. The time of the gentleman has expired. We thank him for his participation. We turn to the lady from California.

Ms. LOFGREN. Thank you, Mr. Chairman.

I was interested to hear your comments, Mr. Londen, on the Santa Clara County bar situation, since I am very familiar with that situation. Elizabeth Shivell's comments have been referred to a couple of times here. I do understand why that comment was made, and I frankly did enjoy the comment that that is why we are lawyers and not social workers. The idea is to figure out a way to act legally. And in fact my community did that with the help of many people, most notably, as I mentioned earlier this morning, the district attorney who has been a very big supporter of the program because of their very important role in obtaining restraining orders in domestic violence and the need to be able to do that without checking immigration status and the like because of the violence component.

I just wanted to explore with you, since Santa Clara County has been mentioned so often, what the entanglement is in your judgment. You reviewed the program and of course interviewed people in both the legal services government-funded and nongovernment-funded programs. Did you investigate this situation in Santa Clara?

Mr. LONDEN. Yes, I have looked into this. The community legal services is one of the programs that was on my interview list and I did do that. I reviewed the lease agreement and the organizing

documents, the board minutes, and all of the documentation that was available on the relationship between these two programs.

There is no money that passes between them other than rent that is paid on a lease at the same rates as other tenants pay. There are no staff members in common. There are no board members in common. There is no shared office space.

These are independent programs with separate and different eligibility guidelines, separate and different priorities, separate and different service methods. Community legal services was formed in the image of the new program with its restrictions.

Ms. LOFGREN. All right. So, I would say then that, although people may not like the fact that there are lawyers taking cases that some might not agree with the advocacy or might not even look forward to the result, that is something that, if the Government is not funding, people have a right to that representation if it is offered to them.

Mr. LONDEN. There are government entities that are willing to pay for work that cannot be done by recipients, and that work is being done, but not by the recipients.

Ms. LOFGREN. I do not intend to use my entire time, Mr. Chairman. I just would like to say that I do not practice law anymore, but when I did I always volunteered some of my time. Certainly California has been in the forefront of providing funds through the bar.

But I am well aware from my current position that we do not have enough people who are able to volunteer to accommodate even the load of people who come to my office for help. We cannot find sufficient numbers of people to obtain restraining orders for victims of domestic violence, including the Legal Aid Society and Community Legal Services and the pro bono bar and the modest means panel and the Santa Clara Law Clinic, which is why our district attorney has been so vigorous.

I appreciate Ms. Tucker's testimony.

If there are some lawyers I am missing who are willing to take these cases for free, I would very much appreciate your providing them to my—

Mr. GEKAS. Will the gentlelady yield? The testimony of Ms. Tucker shows that there was an increase extant right at this moment of people involved in pro bono at a time when everyone in the world knows that the Legal Services Corporation and its funding has begun to diminish.

It means to me, logically, that the needs now being circumscribed by what we do here are being met or at least beginning to be recognized that they must be met by the pro bono lawyer. I infer that from everything that has been said.

Secondly, what we set about to do in the bill, which was passed in the subcommittee and the full committee, was to prioritize so that the needs of the poor are first met. This, coupled with an increase in pro bono, and excluding class actions and redistricting etc. would, in many of our opinions, benefit aid to the poor.

So I have faith in the pro bono bar, as Mr. Barr and Ms. Tucker indicated and as the statistics begin to demonstrate. Then, we are, indeed, bound to try to change the system.

Ms. LOFGREN. Mr. Chairman, I would just note in my own local community, since it has been mentioned so many times, we are down now, I believe, to one lawyer in Community Legal Services because that is all the funding we have generated will provide. And I participated in raising funds for the unbound legal services. They are also providing casework, not just impact casework. I think more lawyers are, in fact, contributing, and it is still not meeting the demand and that is the point I am making. I have people who call my office who need help, and there is no one to help them.

Mr. GEKAS. I thank the lady. Our time has expired, and she may be excused.

The gentleman from Virginia.

Mr. SCOTT. Thank you, Mr. Chairman. I have just a couple of questions.

First, we talk about the political implications. I think we ought to acknowledge that, if the poor people get representation, that is going to cause political implications. The fact that the corporate community cannot rip them off, the fact that they can get their rights vindicated in court, there are political implications to poor people getting decent representation. So the fact that there may be a political agenda or ideology, I think, ought not to be in and of itself evil or sinister.

Second is that these lawyers did not grab the money and are not totally free from restrictions. I mean they are subject to a board, and the board is appointed by, in my understanding, the local bar association representing the majority of the lawyers in the area. Is that right?

Mr. BOEHM. That is correct.

Mr. SCOTT. That was a change from the original provisions that provided that the majority of the board, 60 percent of the board, had to be lawyers. The new regulations said they are to be lawyers appointed by the majority bar association, which prohibits funding of organizations where the board members were appointed by groups other than the majority bar association. So, I mean, that has political implications to it.

Let me ask a couple of questions.

Ms. Tucker, you indicated all these lawyers willing to take cases and at \$75 per case average cost. Did you just count cases? Did you take any accommodation for the seriousness of the case? I mean, does a class action count one and an uncontested divorce count one?

Ms. TUCKER. These were comparisons between the private legal aid of Indiana and the publicly funded. And, yes, we did. The private legal aid did not take the class action suits. What they would do, they would go in. There is an individual who needed a restraining order, needed help with housing, needy individuals who needed legal help to help them through a problem much like the type of things that Ms. Waters was talking about in her earlier testimony, versus the others which did include a lot of class action lawsuits.

But in general, in the Indianapolis examples there were only three class action lawsuits, so the numbers do not get very skewed when you consider there were only three class action lawsuits with those numbers.

Mr. SCOTT. Do you count an uncontested divorce as one and a complex jury trial as one?

Ms. TUCKER. We do. In this particular study, we did. But again, both groups handled both types of cases. There were as many complicated jury cases done by the private sector lawyers as there were done by the public Legal Services Corporation. That is the reason we decided to count them both equally, because they both basically performed similar types of work, the exception being the class actions.

Mr. SCOTT. It is your experience that a person needing representation in a complex jury trial can get representation from the private sector on a pro bono basis as they can with a properly funded legal aid program?

Ms. TUCKER. We found that. We spent a great deal of time on that, and you have a lot of lawyers who are very willing to do that. In Missouri, for example, in order to practice in front of the Federal courts in Missouri, you have to take a pro bono case.

Oftentimes those are the people's most time-intensive cases. It is a requirement for the Eastern District of Missouri to practice in front of the Eastern District of Missouri. You do oftentimes, I was talking to someone who literally spent 120 hours in the last 3 months which, as a lawyer, is a lot of time just on his pro bono case.

Mr. SCOTT. And that is right. And they will be willing to do it again?

Ms. TUCKER. They have to. It is mandatory to practice before the Federal bar in Missouri.

Mr. SCOTT. And you have a reservoir of pro bono attorneys who are qualified to take the cases on an ongoing basis without pay including absorbing most of the costs?

Ms. TUCKER. They are forced to in Missouri in order to practice in front of the Eastern District.

The other thing that is interesting is that they are willing, they are able, and it does happen. Oftentimes these lawyers are better lawyers than the lawyers they would get through legal services. You actually get oftentimes a lawyer who really knows the area of the law much more in depth than—a lot of the legal services lawyers are young lawyers directly out of law school. Maybe you get the lawyer you get. You oftentimes do not get someone with expertise in an area that you need help in, and oftentimes the private bar is better—

Mr. SCOTT. In the private sector you find experts in Social Security and property problems and—

Ms. TUCKER. There are a lot of experts. In our legal referral network we definitely do. We do not put the case together with the lawyer unless the lawyer is an expert in that area.

Mr. SCOTT. Mr. Londen, do you want to comment on that?

Mr. LONDEN. Ms. Tucker says that her organization has 500 lawyers. I am the vice chair of a policy board of the San Francisco Bar Association. Our pro bono association has 3,000 participating lawyers last year. It is not enough.

Mr. GEKAS. The time of the gentleman has expired.

Mr. SCOTT. Could I ask a followup question on that very briefly?

Mr. GEKAS. I will do it on my time, and I yield to you.

Mr. SCOTT. Could you comment on the level of expertise of those 3,000 lawyers on issues, complex issues that people who are poor run into?

Mr. LONDEN. Our program does not handle, because of the competency issue, section 8 housing and certain public benefits matters. A legal aid lawyer can handle in an hour or two, something that one of the young associates in my firm would take days to figure out. The cost per case of a case in which I am involved, my market rate is very high. I do not think the \$75 example counts the value of my time. But if it does, it is less efficient than the aid lawyers.

Mr. GEKAS. I refuse to believe that a young Legal Services Corporation lawyer coming into the legal services field is more expert in being able to approach some of the problems to which Mr. Londen refers. I take pride in knowing that the members of the bar, just like others who enter the field, soon become experts, as you want, in a variety of fields. But to categorize the legal services as being able to do something in an hour that somebody in my law firm could not do in three, it is almost insulting; but that is just me.

Mr. LONDEN. If I could address that, these are 20-year specialists. There are very few young legal services lawyers because there are very few positions being created. Young lawyers do take longer, but the people in the legal aid have been working for a number of years.

Mr. GEKAS. The older ones, like I am in my law firm, know more than some of the incoming lawyers as in any other law firm or legal services. Is that not true?

Mr. LONDEN. It is true, Mr. Chairman, but not in section 8 housing. Experienced lawyers know what they have been doing.

Mr. GEKAS. Mr. Boehm, I would like you to answer, if you could, about whether or not Mr. Londen's contention that Santa Clara's entity is totally divorced from the original entity—that they do not share space, do not share pencils or do not talk to each other. That is what Mr. Londen was practically implying. Is that your information as to Santa Clara?

Mr. BOEHM. Well, the piece of information that was intriguing to me is that they pay rent at the regular commercial rates in the same place. The danger I see in allowing, and under the current rules they can share staff, they can share resources, they can share all sorts of things. There is no bright line test what they cannot share.

So for the Congress and the public here you have two groups operating out of the same building as they do in Philadelphia. How do you know who is doing what with what? You do not have access to the case files. The history of legal services is the history of games being played with Federal money and private money.

So from a public standpoint we do not know. But it sure looks like the same set of folks playing games with money.

Mr. GEKAS. Is that not what Professor Rounds was discussing in his testimony as to the money convergence of entities in your area?

Mr. ROUNDS. That is correct. The Massachusetts Legal Assistance Corporation seems to be coordinating all of this. The players

are the same, so there is no reason to believe that it is not business as usual. Money is fungible, and it is very, very difficult to trace.

Mr. GEKAS. Does anyone see the irony that I see in this? Mr. Londen should be supporting my legislation, which clears the air on all of this—even though it abolishes the Washington based Legal Services Corporation, utilizes block grants and permits non-Federal funds to be used for any purpose at the discretion of the local entity?

You should be supporting my legislation, Mr. Londen. It would solve a myriad of the problems to which you are referring—the left end runs and right end runs that have to be executed by these organizations to be in compliance with the Washington based corporation which issues regulations that no one can understand. But that is another story; you can talk to me privately.

Mr. LONDEN. I would be happy to discuss—the last part is very good.

Mr. GEKAS. Oh, yes, certainly.

Mr. LONDEN. But the block grant program sacrifices institutions that are important to our communities.

Mr. GEKAS. Like the Legal Services Corporation's Washington-based board that issues these edicts that anyone can interpret any way one wants.

Mr. LONDEN. What I have in mind are legal aid programs that attract lawyers that work at below-market pay for the length of their careers, 20 years at a salary that is about a tenth of what I make and that do that because there is going to be a program the year after that and the year after that.

Mr. GEKAS. What makes you feel that the passage of my bill, if you followed it at all, would prevent a local entity from receiving 100 percent of all the Federal funds that they ever received? Are you saying to me that you would support my bill 100 percent if you knew that all the dollars that heretofore have been coming from the Federal Treasury would be supplanted by X, Y, and Z on the local level? Is it a matter of money with you?

Mr. LONDEN. Mr. Chairman, it is more than money. It is how best to serve people.

Mr. GEKAS. If I could prove to you that elimination of the Legal Services Corporation, by giving you the same amount of money to deal with the poor and privatizing so that cases involving a poor individual are given more priority than a class action or redistricting or 100 other things that we have seen that have been abused, you would be supporting my bill.

My time has expired. The time for the first panel has expired. We will proceed to the second panel. I would be interested in further discussion with Mr. Londen on this.

Mr. LONDEN. I would be happy to do so, and I thank the chairman.

Mr. GEKAS. The next panel is composed of Chris Searer, a lawyer in private practice in Spring Lake, MI. She worked for 3 years at the Migrant Legal Assistance Project, Inc., a legal services grantee located in Grand Rapids, MI.

Robert Adams is executive director of Legal Services of the Fourth Judicial District of South Carolina where he has worked as a consultant to that office, a grantee of the Legal Services Corpora-

tion. Mr. Adams is a financial planner who was asked several years ago to detect fraud in that legal aid office of South Carolina which was faltering due to financial mismanagement. Mr. Adams accepted our invitation to testify before the subcommittee and has been kind enough to return to testify on how things have transpired since his testimony here last year.

John D. Robb is a lawyer in private practice in Albuquerque, NM. Prior to his private law practice, Mr. Robb was the director of the National Legal Aid and Defender Association and chairman of the American Bar Association's Committee on Legal Aid and Indigent Defendants.

Sally Colaco is a lawyer in private practice in Kansas City, MO. Prior to her current practice, Ms. Colaco was counsel to the housing authority of Kansas City where, among other things, she engaged and managed outside counsel. Prior to these two positions, Ms. Colaco was a senior attorney with the Resolution Trust Corporation and lawyer with Legal Aid of Western Missouri, a grantee of the Legal Services Corporation.

Pursuant to custom, we will begin the testimony with the first person introduced, Ms. Searer.

#### **STATEMENTS OF CHRIS T. SEARER, ESQ., SPRING LAKE, MI**

Ms. SEARER. Mr. Chairman, I am honored to be here in Washington, DC. I am from western Michigan, so it has always been exciting to come to Washington. I would like to thank the committee for allowing me to speak.

My name is Chris Searer. I am a solo practitioner and victims rights advocate from western Michigan. I have been practicing law for 5 years in a variety of different capacities, including pro bono work for migrant farmworkers in my own solo practice.

My first salaried position after graduating from law school was at Migrant Legal Assistance Project, Inc., hereinafter referred to as MMLAP. The office was located in Grand Rapids, MI. The executive director's name is Gary Gershon. I worked at MMLAP for 3 years and finally had to resign due to some of the reasons stated herein.

While employed at MMLAP, I was struck by the lack of conservation of resources derived from LSC on the part of the executive director and then rubber-stamped by his inactive board of directors. A nonexhaustive list follows:

Failure to hire bilingual staff attorneys, citing lack of qualified Hispanic attorneys and/or qualified Anglo bilingual attorneys; purchasing computer equipment in great number and then failing to train the staff how to use it; concentrating all the resources on ill-conceived class action litigations which could best be used for serving as many clients as possible; management that does not foster teamwork nor organizational systems that resulted in the efficient delivery of legal services.

The executive director did not speak Spanish at this program. The executive director discriminated on the basis of sex, race, and national origin. Some staff members have filed complaints with Michigan Civil Rights. The most recently laid-off support staff members have been the only Spanish-speaking people in the entire office.

As a new staff attorney, I was pressured to manufacture Federal impact litigation against agricultural employers, sometimes over as little as \$40 per client. When I refused to be a party to what I believed to be unethical practices and ill-conceived policy, I was relegated to handling solely service cases; i.e.: social services, landlord tenant disability, et cetera. My suggestions advocating some sort of alternative dispute resolution procedures were scoffed at in lieu of the attitude: "If it moves, sue it."

I was also pressured and penalized for not imposing a far left political philosophy upon my clients' immediate legal needs by convincing them to become parties to class actions which were contrary to their best interests. I discussed cases of malpractice that could have been avoided with a little diligence and common sense.

Further, I always advised against the use of our LSC funds to represent illegal aliens. Notwithstanding, the executive director was constantly trying to figure out manipulations of funds and timekeeping procedures to effectuate his purpose. This is an ongoing waste of time and energy, not to mention taxpayer dollars. This undercuts the services to eligible clients.

While working at MMLAP, I observed another staff attorney engaged in outside practice of law contrary to LSC regulations. I reported to management immediately, and the culprit admitted his wrongdoing but was allowed to remain with the program. Management told me that the culprit would be fired immediately. This did not occur. This is unethical and unacceptable.

Around the time of the last Presidential election, the executive director would wear Clinton/Gore shirts and query the staff members on how they would be voting. The staff members who replied Democratic received better case assignments than those who were more conservative or who, God forbid, owned a firearm. This is un-American.

The executive director has failed to achieve significant private funding due to his neglectful, alarmist, blaming and unethical means of going about it. For example, I represent a family of migrant farmworkers whose two children were kidnapped in Benton Harbor, MI, and found 10 days later in New Orleans with their captor, pro bono. The perpetrator pedophile was found guilty and is awaiting sentencing. The case received plenty of national attention, the "Oprah Show," "America's Most Wanted," et cetera, "Date-line." The point of my narrative is that this executive director sent out a fundraising letter for MMLAP indicating that this family were clients of MMLAP. This was patently untrue and printed without the permission of the family. It constitutes an appropriational invasion of their privacy rights.

Apparently, Mr. Gershon will always try to make his program look good at the expense of others, and here it is on the back of my clients' tragedy.

The executive director acted like an alarmist when it came time to raise funds. He appeared in the Grand Rapids Press indicating that he was going to lay himself off due to LSC funding cuts initiated by certain PAC organizations. He never laid himself off, but two of the best employees of the program either resigned or were laid off.

Mr. Gershon insisted on hiring consultants to look into the feasibility of raising funds, which he did at great cost to the program. Too little too late.

For the record, Mr. Gershon filed a class action lawsuit against the Farmers Home Administration and a private defendant. The suit involves the failure of Farmers Home to acquire waivers from their agricultural borrowers in order that the borrower may charge rent to their migrant farmworkers. All the money for the program has been poured into this ill-conceived class action. Twenty—

Mr. GEKAS. The time of the lady has expired. The written statement will be included for the record, and we hope that she will continue to expound when the round of questioning begins.

[The prepared statement of Ms. Searer follows:]

PREPARED STATEMENT OF CHRIS T. SEARER, ESQ., SPRING LAKE, MI

My name is Chris T. Searer. I am a solo practitioner and Victims Rights Advocate from Western Michigan. I have been practicing law for five years in a variety of different capacities.

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While employed at MMLAP, I was struck by the lack of conservation of resources derived from LSC on the part of the Executive Director and rubber stamped by his inactive Board of Directors. A non-exhaustive list follows:

1. Failure to hire bilingual staff attorneys, citing lack of qualified Hispanic attorneys and/or qualified Anglo bilingual attorneys.
2. Purchasing computer equipment in great number and then failing to train the staff how to use it.
3. Concentrating all the resources on ill-conceived class action litigations which could best be used for serving as many clients as possible.
4. Management that does not foster teamwork or organizational systems that result in the efficient delivery of legal services.
5. Executive Director does not speak Spanish.
6. Executive Director discriminates on the basis of sex, race and national origin. Some staff members have filed complaints with MI Civil Rights. Most recently laid-off support staff member has been only Spanish-speaking person in the entire office.

As a new staff attorney, I was pressured to manufacture Federal "Impact" litigation against agricultural employers, sometimes over as little as \$40 per client. When I refused to be a party to what I believed to be unethical practices and ill-conceived policy, I was relegated to handling solely "service" cases, i.e., social services, landlord/tenant, disability, etc. My suggestions advocating some sort of alternative dispute resolution procedures were scoffed at in lieu of the attitude, "IF IT MOVES, SUE IT."

I was also pressured and penalized for not imposing a far left political philosophy upon my clients' immediate legal needs by convincing them to become parties to class actions which

would be contrary to their best interests. I was aware of cases of malpractice that could have been avoided with a little diligence and common sense.

Further, I was always advised against the use of our LSC funds to represent illegal aliens. Notwithstanding, the Executive Director was constantly trying to figure out manipulations of funds and timekeeping procedures to effectuate his purpose. **THIS IS AN ONGOING WASTE OF TIME AND ENERGY, NOT TO MENTION TAXPAYER DOLLARS.** This undercuts the services to eligible clients.

While working at MMLAP, I observed other staff attorneys engaged in the "outside practice of law" contrary to LSC regulations. I reported to management immediately and the culprit admitted his wrongdoing, but was allowed to remain with the program. Management told me that the culprit would be fired immediately. This did not occur. **THIS IS UNETHICAL AND UNACCEPTABLE.**

Around the time of the last Presidential election, the Executive Director would wear Clinton/Gore shirts and query the staff members on how they would be voting. The staff members who replied "Democratic" received better case assignments than those who were more conservative, or **GOD FORBID, owned a firearm ... THIS IS UN-AMERICAN!**

The Executive Director has failed to achieve significant private funding due to his alarmist, blaming and unethical means of going about it. For example, I represent a family of migrant farm workers whose two children were kidnaped from Benton Harbor, Michigan, and found 10 days later in New Orleans with their captor. The perpetrator/pedophile was found guilty and is awaiting sentencing. The case received plenty of national attention, i.e., The Oprah Winfrey Show and America's Most Wanted. The point of my narrative is that this Executive Director sent out a fundraising letter for MMLAP and indicated that this family were clients of MMLAP's. **THIS WAS PATENTLY UNTRUE AND PRINTED WITHOUT THE PERMISSION OF THE FAMILY. IT CONSTITUTES AN APPROPRIATIONAL INVASION OF THEIR PRIVACY RIGHTS.** Mr. Gershon will always try to make his program look good at the expense of others.

The Executive Director acted like an alarmist when it came time to raise funds. He appeared in the Grand Rapids Press indicating that he was going to lay himself off due to LSC funding cuts initiated by certain PAC organizations. He never laid himself off, but two of the best employees of the program either resigned or were laid off. If Mr. Gershon insists on hiring consultants to look into the feasibility of raising funds, which he did at great cost, he will never raise any money for the program. **TOO LITTLE TOO LATE.**

For the record, Mr. Gershon filed a class action lawsuit against the Farmers Home Administration and a private defendant. The suit involves the failure of Farmers Home to acquire waivers from their agricultural borrowers in order that the borrower may charge rent to their migrant farm workers. All the money for the program has been poured into this ill-

conceived class action. Twenty-thousand pages of administrative record and untold attorneys' fees and taxpayer dollars later, the federal judge found that there is no prudential remedy for the relief Mr. Gershon has sought. THIS LAWSUIT HAS HAD THE EFFECT OF SCARING FARMERS INTO NOT BUILDING FARM LABOR HOUSING IN MICHIGAN RESULTING IN A TREMENDOUS HOUSING SHORTAGE FOR THE CLIENTS THIS PROGRAM IS SUPPOSED TO BE SERVING.

I shudder to think how much money has been wasted on this single case, when it could have been handled much cheaper and with a mutually satisfactory result.

LAW OFFICE OF  
GREGORY G. JUSTIS

616 PETOSKEY STREET  
P.O. BOX 426  
PETOSKEY, MI 49770

AREA CODE 616  
TELEPHONE 347-6380

FACSIMILE 347-391

June 14, 1995

Manuel F. Gonzales  
Office of Migrant Services  
Michigan Department of Social Services  
P.O. Box 30037  
Lansing, Michigan 48909

Re: Michigan Migrant Legal  
Assistance Project (MMLAP)

Dear Mr. Gonzales:

Following receipt of your letter dated June 8, 1995, I had an opportunity to review your allegations with Gary Gershon and Philip Riley.

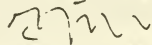
While you have elected to not disclose the source(s) of your allegations, I have concluded that they are unsupported by fact. My investigation, together with many years of experience as a member and officer of the MMLAP Board of Directors, reflect continuous efforts to recruit and retain Hispanic and bilingual staff and Board Members.

Recruitment efforts have been hampered by 1) the availability of qualified candidates, 2) competition for qualified candidates from government and the private sector, and 3) unwarranted allegations of bias and/or racism.

During these troubled times, when MMLAP and the Legal Services Corporation is under political attack on several fronts, it strikes me that our mission would be greatly benefitted by all concerned parties pulling together. This fighting among ourselves can only serve the purposes of our opponents.

If you would like to discuss this matter further, please do not hesitate to give me a call.

Sincerely Yours,

  
Gregory G. Justis

GGJ/sbm

xc: Gary Gershon  
Philip Riley

## STATE OF MICHIGAN



JOHN ENGLER, Governor

## DEPARTMENT OF SOCIAL SERVICES

235 South Grand Avenue, P.O. Box 30037, Lansing, Michigan 48909

GERALD H. MILLER, Director

June 8, 1995

Gary Gershon, Executive Director  
Michigan Migrant Legal Assistance Program  
49 Monroe Center, N.W., 3A  
Grand Rapids, MI 49503-2933

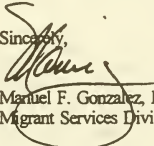
Dear Gary:

This is to take issue with you on your staffing hiring practices and appointments to your Board of Directors.

I would appreciate an explanation of why a non-Hispanic was hired for the IRCA Anti-Discrimination Project recently vacated by Ms. Ali Vasquez, and the appointment of a non-Hispanic to your Board of Directors for the position recently vacated by Mr. Eduardo Velasquez, the only Hispanic attorney you had on the Board. I realize that appointments to the Board are the responsibility of the Board itself, however, I am aware that they rely on your recommendations for those appointments.

I would like to remind you that over 90 percent of your client base is Mexican-American, and your hiring and Board appointment practices do not reflect this. I appreciate your immediate attention to this matter. As always, I am available to help you correct this injustice. Thank you, and I look forward to your reply.


Sincerely,



Manuel F. Gonzalez, Director  
Migrant Services Division

cc Gregory Justis, MMLAP President  
Committee on Spanish Speaking Affairs

MFG/md

*Algeisa M. Vazquez, Esq.* 

---

323 Pine Knoll Drive, Apt. 3A \* Battle Creek, MI 49017-7732 \* (616)

June 17, 1995

Mr. Gary Gershon  
Michigan Migrant Legal Assistance Project  
49 Monroe Center, N.W.  
Suite 3A  
Grand Rapids, MI 49503-2933

Dear Mr. Gershon:

This letter is intended to assist you, the MMLAP staff and the Board of Directors to improve the work environment and MMLAP's ability to deliver legal services to the indigent migrant farm worker community. MMLAP will be a better and more efficient organization by improving the work environment. It is my belief that the following comments are fair and true.

In August 1994, I joined a staff demoralized by management's inability to remedy persistent problems. Nine months later, I left MMLAP for professional reasons and because I was extremely discontent with management. Itemized are the reasons why I believe office morale continues to falter. After years of neglect and management's unwillingness to recognize staff contributions and talents, these issues need to be addressed. It is my hope that you, the staff and the board will use these comments as a springboard toward a better MMLAP organization.

#### Vision and Leadership:

MMLAP suffers from a lack of leadership and vision on the part of management. Despite the lack of leadership, the staff is able to do an excellent job. However, management's unresponsiveness often becomes an obstacle to staff leadership. Staff's attempts to develop a true vision of program goals and objectives are overlooked. Staff's initiatives, ideas, and suggestions are ignored or discouraged.

Management continuously proves that it is unable or unwilling to take decisive action to answer the staff's call for leadership. For example, staff requests to re-initiate *long range strategic planning* go unanswered. The staff continues to call for the opportunity to plan MMLAP's future and improve MMLAP's delivery of legal services. Management demonstrates that it fails to see the overwhelming need for strategic planning. I submit that tensions, discontent and resentment would significantly lessen if management would be more responsive to the need for leadership.

#### Staff Recognition:

MMLAP is fortunate to have a talented staff with a terrific degree of potential. However, management fails to recognize the individuals that make up the MMLAP organization. Several staff members are subject to personal attacks, micro-management and even marginalization. Management does not foster teamwork or organizational systems that result in the efficient delivery of legal services. More specifically, management refuses to recognize the critical role of support staff and para-professionals. This endemic problem is illustrated by

Page 2  
Letter to Mr. Gary Gershon

management's antagonistic attitude toward the firm's reliance clerical staff. Management should recognize the support staff's contributions and consider staff recommendations seriously.

For example, support staff suggestions on developing office procedure are ignored and discouraged. Office procedures are almost non-existent. The problem persists as a continuous obstacle to enhance efficiency. For example, the support staff and attorneys saw a need to improve computer technology, training and networking. Management ignored staff recommendations and instead took unilateral actions that may or may not serve the staff's needs. These types of issues have a direct impact on the staff and the program. Staff suggestions are crucial to ensure success.

#### Bias and Marginalization:

Along with the lack of staff recognition, management plays favorites and displays bias against certain staff. In my view, management bias may range from minor personal differences to bias that may give rise employment discrimination issues. For example, there are documented instances when staff persons felt marginalized from meaningful job participation, training or professional development. Management is strongly encouraged to evaluate its treatment of individual staff members and review MMLAP's and MMLAP-NOLSW non-discrimination policies. Finally it is my view, that management customarily allows discontentment and interpersonal conflicts to escalate. Definitive action should be taken to encourage the resolution of interpersonal conflicts.

#### Communication:

Communication is a very important issue for MMLAP which can only be generally summarized here. Management does not clearly communicate its goals and expectations to the staff. Staff recommendations are ignored without any indication why their ideas were rejected.

I personally experienced communication problems with management. Management should deal directly with staff and clearly explain expectations and job requirements. Communication of staff problems and criticisms should be handled in a constructive manner.

#### Board's Duty to Oversee Management:

While the staff is subject to job evaluations, the board overseeing of management is remiss. After union contract negotiations were concluded, the board awarded Management a raise. The board did not interview the staff, clients or community service providers or conduct any evaluation of management's work. In my view, the board should be more proactive in its duty to oversee management.


Page 3

Letter to Gary Gershon

Most of the above factors are based on personal observation as well as second hand information provided by other staff. I suggest an objective review of these factors by the entire staff with management and board participation. In my view,

MMLAP potential remains untapped primarily because it has been paralysed by discontent and resentment. I wish MMLAP success and hope these comments assist the organization to address the above problems.

Sincerely,



Algeisa M. Vazquez Esq.  
Attorney at Law

cc: MMLAP Board of Directors  
MMLAP National Organization of Legal Services Workers



49 MONROE CENTER, N.W., SUITE 3A  
GRAND RAPIDS, MI 49503-2933  
TEL (616) 454-5055  
FAX (616) 464-7022

## MICHIGAN MIGRANT LEGAL ASSISTANCE PROJECT, INC.

Gary N. Gerahon, Executive Director  
Admitted in Michigan and California

Philip R. Riley, Managing Attorney  
Admitted in Michigan and Illinois

Joseph S. Hughes  
Admitted in Michigan, New York and Pennsylvania

Thomas K. Thornburg  
Admitted in Michigan, Minnesota and Wisconsin

November 20, 1995

Chris T Searer, Esq.  
15796 Margaret Street  
Spring Lake, MI 49456

Dear Chris:

As you probably know, legal services is in the most serious jeopardy it has ever faced. Farmworker legal services are particularly at risk. Therefore, we ask for your help.

It must seem like legal services is always asking for help. The sad reality is that's largely true; except for approximately 5 of the last 14 years, the program has been under attack. The assault has never been more severe than it is now.

MMLAP exists to provide civil legal services to the estimated 160,000 migrant and seasonal farmworkers and dependents throughout Michigan. I ask you and/or your firm (both would be really helpful) to consider a generous donation at this time of real need.

Fundamental justice issues MMLAP has addressed are illustrated by the following:

- many minimum wage cases;
- the ability of farmworkers to collect promised bonuses at the end of the harvest;
- the exploitative practice of independent contracting in farm work;
- unlawful stops by the U.S. Border Patrol in agricultural areas based upon a person's color or appearance;

- peonage;
- denial of public assistance benefits to U.S. citizen mothers and children based upon the undocumented status of a spouse who, by definition, was not eligible to participate in a work program;
- lack of uniformity in food stamps for farmworker families;
- the first case brought under the Migrant and Seasonal Agricultural Workers Protection Act in any of the circuit courts of appeal;
- a farm labor housing program in which the Farmers Home Administration had, for 15+ years, "abdicated its regulatory responsibilities" to oversee the charging of rent (a nationwide class action with private counsel from Detroit);
- the relationship between landlord tenant law and employment law in employment-related housing;
- the battle for field sanitation facilities at work sites, which included a separation-of-powers case;
- violations of the legal fundamentals governing how the migrant education system operates; and
- the consequences of environmental hazards connected with farming, e.g., hazardous chemicals.

Three "snapshots" of recent MMLAP client services are attached.

This really is a potential crisis -- the program could close in 1996. If it does, access to justice for impoverished farmworkers will be severely undermined, if not lost.

Very truly yours,

*Gary*  
Gary N. Gershon

f-fund.let-4

*Here you're doing well. all the best.*

## Snapshots of MMLAP Client Services

### 1. Migrant Legal Advocacy Averts Rash of Unlawful "Lock-outs".

Over a six-week period during the apple harvest in three West Michigan counties, legal advocates at one MMLAP office successfully intervened in 7 separate cases involving unlawful termination of utilities or imminent threat of unlawful "lock-out." The typical case started with a minor dispute between a grower and his farmworkers over some employment issue which escalated into the farmer's termination of utility services to the labor camp where the farmworkers lived. Altogether these 7 cases involved 10 migrant families with a total of over 20 minor children who were subjected to actual or threatened loss of heat, utilities or existing shelter.

Recognizing that dysfunctional communication and ignorance of legal rights and responsibilities are often at the root of such disputes, MMLAP advocates were able to negotiate peaceful resolutions in all of these cases, without involving overburdened civil courts. Utilities which had been shut off were promptly reconnected, leases were reinstated, and rent was abated where appropriate. In most of these instances, the parties came away with a better understanding of their respective rights and responsibilities under Michigan law. The farmworkers regained not only the full, rightful possession of their premises, but a heightened degree of dignity in knowing that they were protected by the same laws that protect other Michigan tenants.

### 2. Farmworker Crew Receives Delinquent "Minimum Wages"

An 18-member asparagus harvesting crew complained that their employer refused to pay them the minimum wage for several weeks of harvesting in West Michigan. The crew, comprised of three extended families of migrant farmworkers, had worked as many as 12 hours per day; but because of the farmer's payment of "piece rate," they grossed less than the federally-required minimum wage of \$4.25 per hour for their back-wrenching labor.

Prompt intervention by legal advocates from MMLAP assisted the workers in filing complaints under the Fair Labor Standards Act with the U. S. Department of Labor, and negotiating with the grower. The crewmembers were paid the back wages owed them within 30 days, in many cases before they moved on to other regions to follow the harvest of summer crops.

### 3. Assistance with Family/Abducted Farmworker Children

Two young migrant children were reported missing in Benton Township. Because of MMLAP's reputation, the news media and other migrant agencies sought the staff's assistance in dealing with the disappearances. The farmworker community started a bank account for donations to help the family and housing was found for them for the winter. Fortunately, the boys were found (and their abductor apprehended) in New Orleans and reunited with their migrant family which intends to remain in Michigan permanently.

Mr. GEKAS. Before Mr. Adams begins to testify, we have heard not just today but in previous hearings of the threat of intimidation or retribution to be exacted by certain parts of the Legal Services Corporation against people like Mr. Adams or others who testify or who are affected by any decisions made in the field is more than anecdotal. We want to warn that any attempts of retribution of people who come forward or are part of any reorganization or somehow are involved in all of this and are trying to be helpful to the committee. If there is any retaliation of any sort, we will deal with it appropriately.

With that, we turn to Mr. Adams.

**STATEMENT OF ROBERT E. ADAMS, EXECUTIVE DIRECTOR OF  
LEGAL SERVICES, FOURTH JUDICIAL CIRCUIT, INC.**

Mr. ADAMS. Mr. Chairman, members of the committee, I appreciate the opportunity to appear before you this afternoon now instead of this morning. In July 1995, I appeared before your subcommittee to explain the structure of our program as an alternative plan for the delivery of legal services. At that hearing, I stated that legal services for indigent people need to be provided, but I did not see the necessity for Legal Services Corporation. I still hold that position.

Since my term as director, which began January 1, 1995, the only two things the corporation has done for our program is issue a check and direct us on how to spend the money. How can paying an organization millions of dollars to provide those two services be justified? Why not use these funds to provide additional services for the indigent clients?

According to the corporation, monitoring for compliance is their stock and trade. I understand that every program is to be monitored every 18 months. LSC has stated that they test, probe, talk to the community, talk to judges, look in our files and do virtually everything they can do to ensure compliance.

I disagree with these statements since our program's last monitoring visit was August 1993. If the corporation is unable to monitor these programs on a timely basis because of a staff deficiency, funding decreases, or any other reason, the bottom line is they are not performing this part of their job.

In May 1996 I was notified that our program was having a capability assessment visit by LSC because a bid was submitted for our service area. During the assessment our board chair, two other board members, my staff and I were questioned on our methods of service delivery. Letters we have received from counsels on aging, local NAACP, probate judges, department of social services and clients demonstrate our program was meeting the needs of our areas's eligible clients.

After indicating that the community perception for our program was positive, the interviewers concentrated primarily in two areas, one, why our percentage of housing cases was low, and two, why was our ratio of clients 50 percent white and 50 percent black when our client population was two-thirds black? In response to the housing cases, we stated that it was within our program's priorities and we made efforts to provide community awareness. To determine case priorities, our program conducts surveys to mail to

previous clients, community service organizations, county attorneys and judiciary. We also conduct in-house surveys during client intake.

In-house surveys allows our proposed clients to play a major role in identifying the priority legal needs of our service area and also guarantees us a response. Our program's board of directors uses all data provided to determine the priority guidelines for our service area. We also stated that we did not prioritize other cases over housing.

Our explanation for our low housing caseload was we were a rural region we did not have a high volume of housing complexes. Even after additional explanations, we were still asked why our housing caseload was low. In our response to the ratio to clients, we explained we did not discriminate against race, creed, sex, color, et cetera. Our service was available to all eligible clients. After additional discussion, we were still asked why our ratio was 50-50.

Also, the competence of our panel attorneys in poverty law was questioned. Judicare programs such as ours have been accused of not having attorneys who specialize in poverty law. I am not an attorney, but I would like to know where a poverty lawyer gets a poverty law degree.

The same CLE courses offered to staff attorneys are also offered to our panel attorneys as a source of training. After stating in prior discussions that our program does not discriminate and also explaining the many ways we use to reach the client community, we were asked if the makeup of the board reflected the interest and characteristics of eligible clients in the service area. My staff and I received that question as an insult, whereas the ability to represent our service area was based on the color of our skin and not on the content of our character.

After our capability assessment interviews and answering all questions in explicit detail, we were still given four special grant conditions for 1996 funding. These four conditions are summarized as follows:

No. 1, present a plan to conduct a needs assessment that effectively involves all major segments of the client community. It was suggested the plan be developed in consultation with LSC or with other entities with experience in conducting these surveys.

In response, we stated in our interview that we had conducted a needs assessment survey in the fourth quarter 1995. The method of conducting the survey was determined by suggestions from other Legal Services Corporations in our program's history. Our needs assessment surveys have always been approved in prior monitoring visits. I guess that was not good enough.

No. 2, pending the adoption of new priorities, adopt a plan to announce to all major segments of the client community the program's current priorities, emphasizing that the program accepts housing, consumer, domestic relations and public benefits cases.

Our response was, since we have been in the community for over 15 years emphasizing that the program accepts the above mentioned cases, and our need assessment surveys have allowed our board to establish priorities for our service area, we do not understand the relevance of this condition.

Mr. GEKAS. We will get back to you as soon as we can.

[The prepared statement of Mr. Adams follows:]

PREPARED STATEMENT OF ROBERT E. ADAMS, EXECUTIVE DIRECTOR OF LEGAL SERVICES, FOURTH JUDICIAL CIRCUIT, INC.

Mr. Chairman and member of the Subcommittee, I appreciate the opportunity to appear before you this morning.

My name is Robert Adams, Executive Director of Legal Services of the Fourth Judicial Circuit, Inc. in South Carolina.

In July of 1995, I appeared before your Subcommittee to explain the structure of our program as an alternative plan for the delivery of legal services. At that hearing, I stated that legal services for indigent people need to be provided, but I did not see the necessity for the Legal Services Corporation. I still hold that position.

Since my term as director, which began January 1, 1995, the only two things the Corporation has done for our program is issue a check and direct us on how to spend the money. How can paying an organization millions of dollars to provide these two services be justified? Why not use these funds to provide additional services for indigent clients?

According to the Corporation, monitoring for compliance is their stock and trade. I understand that every program is to be monitored every 18 months. LSC has stated they test, probe, talk to the community, talk to judges, look in our files, and do virtually everything they can do to ensure compliance. I disagree with these statements since our program's last monitoring visit was August 1993. If the Corporation is unable to monitor the programs on timely basis, because of a staff deficiency, funding decreases, or any other reason, the bottom line is they are not performing this part of their job.

Consistency in case statistics is a weakness. Last year during the Subcommittee hearing, a cost per case of \$208 in 1994 was presented to Mr. Scott as an LSC average. Simple math shows that the sum of \$400 million from LSC and \$221 million from non-LSC sources divided by 1.7 million cases is \$365. Even after subtracting the LSC management fee, the cost per case was \$360. A big difference from the average of \$208 that LSC claims.

In May, I was notified that our program was having a capability assessment visit by LSC because a bid was submitted for our service area. During the assessment, our board chair, two other board members, my staff and I were questioned on our methods of service delivery. After indicating that the community perception for our program was positive, the interviewers concentrated primarily in two areas. (1) why our percentage of housing cases were low and (2) why was our ratio of clients 50% white and 50% Black when our client population was  $\frac{2}{3}$  Black? In response to the Housing cases, we stated that it was within our program's priorities and we had made efforts to provide community awareness. We also stated that we did not prioritize other cases over housing. Our explanations for our low housing caseload were: We are a rural region and we do not have a high volume of housing complexes. Even after additional explanations, we were still asked why our housing case load was low. In our response on the ratio of clients, we explained we did not discriminate against race, creed, sex, color, etc. Our service was available for all eligible applicants. After additional discussion, we were still asked why our ratio was 50-50.

Also, the competence of our panel attorneys in poverty law was questioned. Judicare programs such as ours have been accused of not having attorneys who specialize in poverty law. I'd like to know where a poverty lawyer gets a poverty law degree? The same CLE courses offered to staff attorney programs are also offered to our panel attorneys as a source of training.

After stating in prior discussions that our program does not discriminate; and also explaining the many ways we use to reach the client community, we were asked if the make-up of the board reflected the interest and characteristics of eligible clients in the service area. My staff and I received that question as an insult; whereas the ability to represent our service area was based on the color of our skin and not the content of our character.

After our capability assessment interviews and answering all questions in explicit detail, we were still given four special grant conditions for 1996 funding. These four conditions are summarized as follows:

(1) Present a plan to conduct a needs assessment that effectively involves all major segments of the client community. It was suggested the plan be developed in consultation with ISC or with other entities with experience in conducting these surveys.

We stated in our interview that we had conducted a needs assessment survey in the Fourth quarter, 1995. The method of conducting the survey was determined by

suggestions from other Legal Services programs. Our needs assessment surveys have always been approved in prior monitoring visits. I guess that was not good enough.

(2) Pending the adoption of new priorities, adopt a plan to announce to all major segments of the client community the program's current priorities . . . emphasizing that the program accepts housing, consumer, domestic relations and public benefits cases.

Since we have been in the community for over 15 years emphasizing that the program accepts the above mentioned cases; and our need assessment surveys have allowed our board to establish priorities for our service area, we do not understand the relevance of this condition.

(3) The executive director shall have presented to the board, for the board's consideration, the issue of whether it is necessary or feasible to expand the board so that it might more nearly reflect the interests and characteristics of the eligible clients in the service area.

Our current board took offense to this condition. It questioned their ability to govern this program with a non-biased and non-discriminatory attitude.

(4) The recipient shall submit to LSC a plan to address the oversight of the program's paralegal staff and of the legal work performed by its contract attorneys.

We questioned the need of an additional plan for program oversight. An excerpt from a prior monitoring visit emphasizes the strength of the staff. It states as follows: "The LSFJC intake staff, who are not designated 'paralegals', are dedicated to making legal services available to the poor, and serve as the primary strength of the program. There have been positive impressions of them in previous reviews, and they continue to be highly motivated and take the lead in interacting with the legal and client community. The diligent efforts of these paraprofessionals directly impact access to the program and the quality of legal services. The paralegals are able to function effectively with a limited amount of supervision and their level of motivation and competency is such that one is left with the impression that the program could function without either the director or the board."

A neighboring Legal Service program also bid for this grant, and did not have a capability assessment interview. Because of the implications from our interview and the required special conditions, our board feels that they have had enough; therefore, they have voted to consolidate with another Legal Services program.

I will suggest to you the State bar associations have more experience in providing legal services to the poor for their service areas. I would send the appropriations directly to them. I am also confident that State bar officials are competent to administer the funds in full compliance with whatever restrictions Congress may choose to impose. Our Constitution states equal justice for all. These services are needed and can be provided without LSC.

Thank you for hearing my views.

## **STATEMENT OF JOHN D. ROBB, COCHAIRMAN, NEW MEXICO REPUBLICAN LAWYERS COMMITTEE FOR LEGAL SERVICES**

Mr. ROBB. Mr. Chairman, I come here with a somewhat different perspective, I think, from most of the people who have testified here in that I have no connection of any kind with the legal services program. I have no connection of any kind with the American Bar Association, although in many years past I served and had the privilege of serving with the American Bar 25 years ago. Rather, I am here as a representative of a group of, I would call them, moderate to conservative Republicans in my State of New Mexico; and I want to bring you their viewpoint before the panel.

Our view is that it is really too soon to know whether or not the changes that the Congress has decided to make in this program are working. The ink is hardly dry upon the document that made those changes the end of April, and I really think it is premature for us to think that we can judge what is going on and whether or not compliance is being had by the programs with those restrictions.

It is our view that the Congress has spoken, that the restrictions have been made. Some people disagree with them. Some agree with them. But as far as I am concerned and our group is concerned,

we know now what the Congress wants. The question is let us get on with the program. Let us try to make it work in the very best way we can.

We have now a new program that the Congress has created. And to hear stories about what has happened in the past or why it will not work in the future, to my way of thinking is simply not the issue. The issue here is it has been decided. It is no longer a question of whether or not we should have these restrictions or whether or not there have been violations in the past.

Yes, there have been some claims of violations in the past. But the question is now: Can the new program that has been crafted by this Congress work? In a broad consensus of the Congress, I think, we need to leave the program alone. I think we need to preserve its funding at approximately the same level. We need to try to live with the restrictions and make them work, and 2 years from now we will know whether or not it is working properly. But to try to do that now is wrong in our opinion. I think it is drawing much too narrow a bead, and I do not think that anything useful can really come from an attempt to do that. I am saying that as directly and as frankly as I can, Mr. Chairman.

Even though it is too early to know, I can tell you that with regard to what has happened here that the changes that are being made are working in my State of New Mexico. We are complying with the new restrictions in New Mexico. A new program has been set up to take over some of the functions of the law and poverty center that was previously funded by the Federal Government. But we, like Santa Clara, have separate boards of directors, separate staff. We do have an office in the same building. We have the same landlord. But we are doing our very best to preserve this as an independent organization separately funded by doing the job that many people who are involved in this think needs to be done.

So, I think that, insofar as the restrictions are concerned, those restrictions are being complied with to the best of our knowledge, but again, Mr. Chairman it is much too early to know whether or not that is working. These stories, you have referred to them as anecdotal dysfunction. I think that was the language that you used. That is what they are. They are anecdotes. They are individual, isolated examples of things that are happening that do not necessarily portray the full picture.

We need the full picture. More study is needed. More time is needed to get that full picture. One example that I have heard repeated again and again is the statement that legal services, for example, is against the farmers and the ranchers. I can tell you right now that in New Mexico, yes, some representation is made of farm workers, particularly in the southern part of the State, but nobody has told the story about what is going on with regard to the small ranchers and farmers. Tremendous work is being done all over the country in this area.

In New Mexico we have accepted since 1990 associations of small water districts, that involves 60 water districts. We are representing them in adjudication for water rights. They have to have irrigation for crops. We have represented over a thousand of those just in the nineties, and that is going on in many other places in the

country. Legal Services is not against farmers and ranchers. Legal Services is performing a tremendous service for those people.

Quickly to the issue of lawyers. Can the lawyers do it all? Of course not. I hope you will ask me some questions about that.

Mr. GEKAS. Yes, I intend to.

[The prepared statement of Mr. Robb follows:]

PREPARED STATEMENT OF JOHN D. ROBB, COCHAIRMAN, NEW MEXICO REPUBLICAN  
LAWYERS COMMITTEE FOR LEGAL SERVICES

Mr. Chairman and members of the Sub-Committee. My name is John D. Robb. I reside in Albuquerque, New Mexico, where I have been in private practice since 1950. As a life-long Republican lawyer, it is my privilege to submit this Statement on behalf of the New Mexico Republican Lawyers Committee for Legal Services, a group of approximately 40 lawyers from various parts of the state of which 20 form the executive core group. The Committee is comprised primarily of lawyers of conservative and moderate persuasions whose views we consider to be typical not only of Republican lawyers in New Mexico, but of many Republican lawyers elsewhere as well. Although the National Legal Services program is bipartisan, we Republican lawyers believe that it is consistent with fundamental Republican party principles and positions which support the concepts of a nation of laws, the rule of law applying to all persons, the effective functioning of our judicial system, encouraging and demanding the use of our system, including lawyers, arbitration, mediation, conciliation, courts and other parts of our justice system for the peaceful resolution of disputes instead of street violence and similar unlawful efforts to take justice in one's own hands to resolve grievances. It also seems inconsistent to us to deny people access to the very system which we encourage and expect them to use.

Some critics of the LSC have contended or strongly implied

that: (a) many Legal Services Lawyers have improperly used LSC federal funds to promote or engage in activities forbidden by Congress' new restrictions; (b) Legal Services "Activists" Lawyers are the main force behind setting up new entities to handle matters now removed from LSC permissible activities; and (c) that the LSC does not need the present funding level because most of the individual programs already have adequate funding from other sources.

Although there may be isolated instances to the contrary, we believe that none of these statements are correct with regard to New Mexico and many other areas of the country with which we are familiar.

Prime movers here, as in other areas, have chiefly been both the New Mexico Judiciary and the State Bar. Concerned about the effects upon the justice system of this state as well as for the plight of poor New Mexicans caused by cut backs in federal LSC funding, both the Judiciary and the State Bar have studied possible solutions to the reduced level of federal funding and permitted representations. The New Mexico State Bar established a task force under the leadership of Pamela Minzner, an associate justice of the New Mexico Supreme Court, and Stan Sager, a conservative Republican and respected member of the Bar. The task force adopted broad ranging recommendations to try and deal with the crisis, many of which are being implemented at this time.

The New Mexico Center on Law and Poverty, a recently

established non-profit corporation, with 501(c)(3) I.R.S status, like similar programs in other states, is providing some of the training and other activities no longer permitted by LSC grantees. The New Mexico Lawyers Care Program, which uses other funds, is a State Bar program created to administer, recruit and assign cases to the 500 plus volunteer lawyers who handle matters which New Mexico LSC grantees may no longer conduct. Both are separate from any LSC programs. They have independent direction, and in the case of the Center, also independent boards of directors, lawyers and staffs with personnel and quarters separate from those of any LSC program in New Mexico. In any event, there is nothing wrong with former Legal Services lawyers participating fully in them. Indeed, it would be unwise to reject their considerable experience in favor of hiring lawyers without those skills.

The twenty-seven percent (27%) cut in LSC funding for New Mexico programs which has already occurred, has produced great hardship and human suffering among New Mexico's poverty population, especially in the rural areas resulting from the present and imminent future deduction in lawyers, legal offices and support personnel. Approximately ninety-five percent (95%) of the funding for New Mexico's individual legal services programs came from LSC funds before the FY96 funding cuts. Despite valiant efforts by the State Bar and other interested groups and persons, less than an estimated twenty percent (20%) of these reductions in funds are being off-set by this supplementary funding and by the splendid

volunteer efforts of the New Mexico Lawyers Care program. Past experience suggests that there's little chance that New Mexico will make up more than a small part of the approximately \$1.3 million reductions in federal LSC funds which have already occurred. New Mexico, a predominately rural state, will like many other states, be particularly hard hit by the cut backs because of the scarcity of country lawyers and local funding sources.

**STATEMENT OF SALLIE DUNLAP COLACO, ESQ., KANSAS CITY,  
MO**

Ms. COLACO. I am Sallie Colaco. I thank you for allowing me to talk to you today about Legal Services Corporation. As you mentioned, Mr. Chairman, I am one of the former general counsels to the housing authority of Kansas City, MO. The housing authority is a severely distressed and troubled housing authority that was placed in Federal receivership in July 1993. The managing attorney of Legal Aid of Western Missouri was key in the selection of the permanent receiver who was brought from Boston to Kansas City to be the receiver for the housing authority.

The point that I really want to stress to you is my assertion that the individual legal needs of individual poor people in Kansas City are not being met because legal aid has chosen instead to pursue class action litigation in a seemingly blind desire for attorney's fees, and I would like to support some of this with three quick examples.

Soon after I started at the housing authority, legal aid filed a request for attorney's fees under two consent decrees. The fees totaled over \$200,000. I filed my objections to the fee request. My objections included the fact that the majority of the activities had been prohibited as monitoring activities under a previous court order and the fact that many of the activities were unrelated to the consent decrees under which the fees were requested.

After some temper tantrums at legal aid, I was instructed by the receiver to withdraw my objections. The housing authority then paid the full amount of the fee request to legal aid. Subsequently, the housing authority entered into contracts with legal aid to pay \$60,000 per year for 2 years for monitoring under two consent decrees. As part of the justification process because the housing authority is a Federal grantee and has to follow certain procedures, I sent out a request for proposals to Kansas City area firms. The bids came back at less than \$5,000 a year, and yet legal aid was being paid \$60,000 a year.

My second point is that, when I was assigned to review tenant organizational documents for tenant groups at the housing authority, most of these groups were originally formed by legal aid. I determined that, because they did not meet HUD Federal regulatory requirements, they were ineligible to participate in funding and other HUD programs.

When legal aid attorneys found this out, they were outraged. At a public meeting they stated that I was incompetent. I did not know what I was doing. I was not pro-tenant enough, and I had no business being general counsel for the housing authority.

I believe those statements as well as subsequent statements of that nature directly to my supervisors led to my termination from the housing authority approximately a year ago.

My third point is that legal aid frequently intervened in cases involving drug activities with public housing residents. Legal aid continues to oppose legislation proposed in Missouri that would allow landlords an expedited procedure to evict tenants involved in drug-related activities.

The poor people in those same communities support the legislation, and yet legal aid, who purports to represent these poor people, comes down on the other side of the issue.

Again, I recognize that poor people need legal representation. I am from a very poor background myself, and I think I have some understanding of what those legal needs are, but I do not think legal services is well-suited to do that.

Granted some people are very happy to maintain their long-term purposeful dependency on government programs and legal aid is perfectly suited to represent them, but there are a lot of people out there who want something better and different for themselves and their children and their futures; and they are not being represented.

I think there are better, more effective, more cost-efficient ways to represent poor people than legal services is doing. And I think we need to do that now. Thank you.

[The prepared statement of Ms. Colaco follows:]

PREPARED STATEMENT OF SALLIE DUNLOP COLACO, ESQ., KANSAS CITY, MO

I, Sallie D. Colaco, am an attorney residing and practicing in Kansas City, Missouri. I worked as a staff attorney at Legal Aid of Western Missouri (LAWMo) for approximately one (1) year, from August, 1990, to September, 1991. I reported to Julie Levin, the Managing Attorney of LAWMo's Central Office. Soon after I began working there, my father died following a long illness. Soon after that, my husband lost his job and began working as a contract employee. My husband suffers from asthma, which was considered a preexisting condition for purposes of my health insurance at LAWMo. If I had chosen to cover him through the policy there, I would have been required to pay for his coverage for a period of one year, during which period all asthma-related expenses would have been excluded from coverage. Consequently, in order for him to maintain insurance coverage, we had no choice but to continue the policy with his former employer under COBRA. The burden of the COBRA payments, my desire to try to offer financial assistance to my mother following my father's death and the uncertainty of my husband's employment situation, all required that I find employment more lucrative than my job with LAWMo. When I first started work at LAWMo, Ms. Levin stated to me and my husband that, because of the low salaries, people who worked at LAWMo either had rich parents or well-employed spouses. As I had neither, I sought alternative employment.

In September, 1991, I assumed a position with the Kansas City Office of the Resolution Trust Corporation (RTC), where I worked until October, 1994. I began as an Environmental Specialist and ended as a Senior Attorney in the Real Estate Section. My duties as a Senior Attorney included, but were not limited to, the following: contracting with outside counsel throughout the U.S. and reviewing fee bills from all such counsel; ensuring program compliance with, *inter alia*, the Single Family Affordable Housing Disposition Program and the Multifamily Direct Negotiated Sales Program, before, during and after disposition; and certifying not-for-profit entities to participate in RTC's conveyance program. All of these duties included administering and ensuring compliance with federally regulated programs.

In October, 1994, I assumed the position of General Counsel for the Housing Authority of Kansas City, Missouri (HAKC), a severely distressed and troubled housing authority which was placed in federal receivership in July, 1993. Prior to beginning work there, Ms. Levin stated to me that she had given me a good recommendation and that she was sure I would do a good job. My duties included, but were not limited to, the following: contracting with outside counsel and reviewing fee bills from all such counsel; and ensuring program compliance with all Department of Housing and Urban Development (HUD) programs related to public housing, including certifying tenant groups to participate in certain HUD programs.

I was terminated from that position in June, 1995. During and soon after my brief tenure at HAKC, the following information and/or circumstances came to my attention regarding LAWMO's activities and relationship with TAG Associates of Kansas City, Inc. (TAG-KC), the receiver for HAKC.

Upon my information and belief, Ms. Levin, in her capacity as legal representative of, according to her, all of the public housing residents in Kansas City, Missouri, was key in the selection of TAG-KC as the receiver of HAKC. Ms. Levin apparently was acquainted with Dick Bluestein, the attorney for TAG-KC. Mr. Bluestein is a former Legal Services attorney in Boston, MA, who was instrumental in the Boston Housing Authority's placement into receivership and who then assumed the position of general counsel to the Boston Housing

Authority. I believe Ms. Levin spoke with Mr. Bluestein during the summer of 1991, when she was considering assuming the General Counsel position at HAKC. While at the Boston Housing Authority, Mr. Bluestein worked with Jeff Lines, his future client and the founder and sole officer, director and shareholder of TAG-KC. Mr. Lines frequently stated, whether in jest or otherwise, that he should pay a finder's fee to Ms. Levin for bringing him to Kansas City.

While at HAKC, I was directed by TAG-KC to withdraw the objections which I had filed with the federal court in response to Ms. Levin's application for attorney fees pursuant to certain consent decrees under which HAKC was then operating. This direction came after Ms. Levin's explosive expression of outrage directly to Mr. Lines (in Mr. Lines' words, "she launched") regarding my filed objections. My objections included, *inter alia*, the allegation that Ms. Levin was billing at an attorney's rate for work generally done by support staff, the allegation that Ms. Levin was billing for items unrelated to the particular consent decrees under which she sought fees (including traveling to Washington, DC, to meet with Secretary Cisneros), the allegation that Ms. Levin was billing for activities disallowed under a particular consent decree by federal court order, and the allegation that the fee applications generally included items normally considered to be bill padding. As stated previously, during my 3+ years at RTC I regularly reviewed fee bills from attorneys and law firms across the country. Also as stated previously, while at HAKC my duties included reviewing fee bills from outside counsel. Therefore, I believe I was and am very well qualified to make a determination regarding the propriety of LAWMo's fee application. Local HUD staff and attorneys, as well as DOJ attorneys, supported me in my objections to Ms. Levin's fee request, yet because of Ms. Levin's tantrum, I was instructed by Mr. Lines to withdraw the objections. Thereafter, HAKC paid to LAWMo the full amount of the fees requested by Ms. Levin, an amount in excess of \$200,000.00.

HAKC subsequently entered into two (2) contracts with LAWMo to pay a total of

\$60,000.00 per year for two (2) years as payment of attorney fees for monitoring under two (2) of the three (3) consent decrees. Although these agreements should probably have been classified as settlement agreements, they were styled as "contracts," the reason being that settlements require HUD approval and HUD, by and through its attorney at DOJ had indicated that it would not approve any payments by HAKC to LAWMo. As part of the justification process for these contracts, I put out a Request for Proposals to Kansas City law firms, asking them to submit bids for the monitoring work. I solicited firms which have national and international experience in consent decree monitoring. The bids for monitoring under all three consent decrees for one year came back at under \$5,000.00. Yet, LAWMo is receiving \$60,000.00 for what would under any other circumstances be less work.

HAKC is a grantee under HUD's HOPE VI program. The amount of the grant is \$47.5 million. HUD sent the original grant application back to HAKC for revision because of several major deficiencies including, *inter alia*, insufficient resident input. In order to provide for resident input in a representative capacity, the residents of the public housing project which was the subject of the grant purportedly formed a tenant association. The requirements for tenant associations are set forth in 24 CFR Part 964. At the request of TAG-KC, I performed an analysis of all of the tenant organizations (the vast majority of which were originally formed by LAWMo and all of which were intended to be not-for-profit organizations) to determine their compliance with the regulations. Because of my experience at RTC as the Legal Division representative on the committee responsible to certify not-for-profit entities to participate in certain RTC programs, I believe I was and am very well qualified to make a determination regarding the tenant organizations' eligibility to participate in this and other HUD programs. In fact, the regulations specifically state that housing authorities are to make such a determination.

Based upon my review of the relevant organizational documents, it was my determination that all of the tenant organizations, including the one at the HOPE VI site, failed to meet the regulatory requirements. My conclusion was that until the resident groups met the requirements, all contracting, all funding and all representative-capacity input, including that concerning the HOPE VI site, be suspended. HUD's Kansas City, Kansas Office concurred in my assessment. Further, my opinion was and is that to allow these activities to continue would constitute, at the very least, program fraud under the Program Fraud Civil Remedies Act. Again, because my duties at the RTC included investigation and identification of cases for potential program violations, I believe I was and am very well qualified to make such a determination regarding potentially fraudulent/noncompliant activities.

When the findings of this investigation were presented to the resident groups at a public meeting, it was reported to me by other HAKC employees that Ms. Levin became outraged, stating, among other things, that I was incompetent, was not pro-tenant enough and had no business being the general counsel for HAKC. Statements made to me by HAKC's Executive Director in May, 1995, lead me to believe that Ms. Levin's subsequent direct contacts with my immediate supervisors eventually led to my dismissal from HAKC. Meanwhile, because of Ms. Levin's vociferous insistence, all contracting, funding and representative-capacity input continued, despite the fact that such behavior most probably constituted civil fraud and very likely constituted criminal fraud against the U.S. government. All encouraged, facilitated and assisted by Ms. Levin and LAWMO.

Near the end of my time at HAKC, Ms. Levin sent a contract for execution by HAKC. The contract provided that a resident employee would be entitled to relocate to a scattered site single family house. The basis for the request was that a suitable unit of the appropriate size was unavailable in the soon-to-be-renovated public housing project where the resident then resided.

Because no other resident was being offered such a relocation unit, and especially not under such a contract as prepared by Ms. Levin, and because such an arrangement would constitute special treatment of one resident over all other residents, the Legal Division made some basic inquiries into the matter.

The findings were that the resident knew that, contrary to her and Ms. Levin's assertion, an appropriately sized unit was in the process of being prepared for the resident's relocation. In fact, the resident herself had instructed the construction department to stop work on the unit because, according to her, she was moving to a scattered site unit. Thereafter, she, by and through Ms. Levin, asserted that there was no such unit available to her and that therefore, she had no choice but to relocate to a scattered site unit. Despite the fact that a continuing inquiry revealed more and more questionable behavior by the resident, including alleged instances of illegal drug use, TAG-KC instructed the Legal Division to stop all further inquiries and made rude and insulting remarks about the quality of the work product. Consequently, special treatment and benefits were obtained based on false and potentially fraudulent statements submitted by Ms. Levin and her client.

Also near the end of my time at HAKC, the Legal Division received confirmation that one of the resident leaders at a particular public housing project was harboring a former public housing resident by allowing her to live in his apartment unit in violation of the lease and HUD regulations. The former resident had only recently been evicted because of drug activity, including use, possession and sale of crack cocaine. She had purportedly forced her young teenage daughters to prostitute themselves in order to get money for drugs. This former tenant was and is, to the best of my knowledge and belief, under investigation by the FBI and the HUD Office of Inspector General regarding the misappropriation of HUD funds related to the same public housing project from which she was evicted and where she was living in violation of HUD

regulations. The Legal Division started tenancy termination procedures against the resident. Because of Ms. Levin's intercession on the resident's behalf, we were instructed by TAG-KC to stop all such activities.

LAWMo routinely simultaneously represents resident organizations (in their capacities as legal entities), individual board members (in their individual capacities) and individual residents (in their individual capacities) of the same public housing projects. Although these would appear to most practitioners to be conflicting representations, LAWMo purports to have the appropriate waivers allowing them to engage in such representations.

For the past few years, LAWMo has continued to work with and lobby Missouri state legislators to oppose proposed legislation providing to landlords an expedited eviction procedure for tenants involved in drug-related activity. LAWMo is commonly known to write all of the housing-related legislation which is sponsored by a particular Missouri State Senator representing a district in the Kansas City area.

LAWMo has engaged in and continues to engage in guerilla law practice tactics, refusing to abide by the standards of the profession in Kansas City. LAWMo's attorneys routinely renege on settlement agreements which would be binding among and between normal practitioners. They engage in unnecessary and dilatory tactics, regularly flooding opposing counsel with a barrage of correspondence, motions and counterclaims. And any suggestion that perhaps they might inject a degree of civility found among practitioners who are subject to normal market forces leads to uncontrolled outbursts of temper tantrums and pouting, along with self-righteous assertions that they are standing up for the rights of the poor and how could anyone dare to question their motives and sincerity. Witness Ms. Levin's potentially tortious interference regarding my position at HAKC through her constant and vicious attacks launched against me in public and in her regular direct communications with my client.

In recent months, I have learned that other attorneys at LAWMO have made attempts to obtain certain financial information from HAKC. The financial information which they do manage to get is sketchy at best, leading them to wonder and worry where the \$125 million in redevelopment funds are going. To my knowledge, Ms. Levin has no financial and/or business expertise to enable her to make a judgment regarding the propriety and sufficiency of the information being presented by HAKC. However, all of the concerns regarding HAKC's operations are routinely silenced and dismissed as unfounded because of Ms. Levin. The sense among some of the other attorneys is that because Ms. Levin is bringing in so much money to LAWMO, she has effective control over the entire LAWMO organization, and their genuine concern for and expertise in rendering services to the low income community matter not at all. Of course, these same attorneys are reluctant to come forward because of the fear of retribution from Ms. Levin and LAWMO's Executive Director, Richard Halliburton.

Anecdotal evidence suggests that many low income residents feel that their legal needs are not being served by LAWMO. Because of the highly political nature of Ms. Levin's representation of public housing residents exclusively, many public housing residents and other people in the low income community are reluctant to go to LAWMO. During my time at HAKC, many residents came to me seeking legal assistance. Legal ethical considerations prevented me from rendering services on their behalf. However, moral ethical concerns led me to try to obtain alternative assistance for them. Yet, my attempts to enlist volunteer attorneys from the private sector were thwarted. I was told that LAWMO already had a volunteer attorney program in place. The trouble is, the only way people can participate in LAWMO's volunteer attorney program is to go through LAWMO, which is what many of them are trying to avoid. And so they are effectively shut out of the legal system in Kansas City.

Since my termination from HAKC, I have been unable to find other permanent

employment. On the occasion of an interview last summer, the potential employer noted that I had worked with Ms. Levin and stated that he knew her well. After not hearing from him or the company again, I can only assume that Ms. Levin had no compunction about repeating her opinion regarding my lack of abilities, as she did to my former employers. On another occasion, the owner of a temporary placement firm for attorneys asked me what had happened at HAKC and I told her about my experience and LAWMo's involvement. Although she had referred me to two (2) placements prior to that time and had received positive comments regarding my work and abilities, I have received no calls from her since then. On a visit to her office she deliberately avoided meeting with me, and during a call to her office she deliberately avoided identifying herself to me. Contacts with the Missouri Association of Trial Attorneys refuse to take or return my calls. Word has gotten back to me that the reason is because of my position regarding LAWMo. Consequently, I can only assume that I have been effectively blackballed by a significant portion of the legal community because of Ms. Levin.

I am from a poor, working class family. My father worked as a welder, mechanic, construction worker, electrician, in short, at whatever jobs he could get. My mother worked for nearly 30 years as a public school cafeteria manager until she was forced to retire recently because of a work-related disability. Having been poor myself, I understand the needs of the poor. I don't just feel their pain — I *know* their pain because it is the same as mine. I understand that they need legal representation just as does everyone else. Yet in order for it to be effective, the representation must be rendered in a calm, professional manner, free from any sort of radical social and/or personal agenda. The individual needs of individual poor people must be addressed. The legal service providers must provide solutions to the problems, not be another source of conflict. These things are not happening in Kansas City. These are just some of the failings of LAWMo.

Right now, at this very moment, I and my family face an uncertain future. In September, 1992, my husband lost his contract position and was unable to find work again until January of this year. He is now nominally employed by a computer company in order to get insurance coverage for our family. Until the company is able to bill him out on a contract, the salary he receives will continue to be quite small. I am attempting to establish my own law practice, but it will take years to get back to the level of income I was at before. Years that I don't have, because if I can't find work in the next month, my family and I face serious financial consequences, including losing our home and everything else we've worked so hard for. Unfortunately, based upon the past year's experience, I fear that the much needed work will not be forthcoming.

My son is 13 and my daughter is 8. I am trying to instill into them the same sense of decency and fairness that my parents gave to me. The belief that hard work will be rewarded. The moral strength to stand up for what you know is right. But it's hard to teach these things when they see how I have been mistreated for standing up for the right, abiding by the law, fulfilling my duty as an officer of the court. It breaks my heart, every day, to look at them and know that we may soon be homeless because I have not been able to find work.

Coming from poor circumstances as I do, it was and is a great honor to be a lawyer. I take seriously my position as an officer of the court. I believe my first obligation is to uphold the law and to ensure that my clients abide by the law. And yet, my attempts to bring honor and dignity to the profession as I practice it appear to bring punishment and rejection from others in the profession, others like Julie Levin.

When this nightmare first started a year ago, I believed it to be an isolated incident, that Ms. Levin was just an aberrant, rogue lawyer, crazed by her sense of power over the Housing Authority. If that were the case and it were an isolated event, I could almost accept it. But

when I see and hear of how numerous other Legal Services attorneys all over the country behave in the same fashion, thinking nothing of ruining people's lives and the lives of their children, I can't accept it.

I am a Democrat. Not the limousine liberal type, but the hard working blue collar type. I am running for Missouri State Representative as a Democrat. I say this to stress to you that what happened to me has nothing to do with being a Democrat or a Republican. To emphasize to you that this is not and must not be a partisan issue. This is an issue of what is right and just, an issue of what our government cannot and must not allow. If any other government-funded program wreaked such havoc for any reason, it would not be tolerated. And so we must not tolerate Legal Services as it wreaks such havoc under the guise of serving the poor.

Our country faces many hard decisions now and in the coming years. Many programs, including public housing and the rest of the Greater Welfare system, must be dramatically reformed if we are to achieve the fiscal stability that will be required for the continued prosperity of the country. I have long been an advocate for the rights of the underclass and the downtrodden, having come from there myself, and it saddens me to come to this conclusion. But I truly and firmly believe that the only way we will ever achieve the necessary meaningful reform of these programs is to first reform or abolish the Legal Services Corporation. LSC, as exemplified by LAWMO, has lost sight of its original purpose of rendering legal services to individual low income people. It is accountable to no one, but instead seeks to implement its own outdated political agenda -- an agenda which acts not to make meaningful change in its clients' lives but to perpetuate the long term purposeful dependency of those it claims to serve.

Left as it is, LCS will continue to obstruct and resist any and all efforts at change to these programs whose federal funds have become its mother's milk of continued existence. It will fight efforts at change, not so much in standing up for the rights of the underprivileged but in

trying to preserve itself. Left as it is, I fear that the end result will be that we, the public, as the ultimate source of funding for LSC, by and through LSC will litigate ourselves even further into moral and social chaos.

To paraphrase Ben Wattenburg from his book Values Matter Most, government must do no harm. But, government must undo any harm which it has done. LSC is a great harm which must be undone. I urge you to undo that harm now by acting to defund Legal Services Corporation.

## M E M O R A N D U M

**SUBJECT:** Guinotte Manor Resident Association -- Eligibility as RC/RMC

**DATE:** April 4, 1995

This memorandum examines the eligibility of Guinotte Manor Resident Association (Guinotte) for official recognition as a resident council (RC) and/or resident management corporation (RMC). The basis for the determination of eligibility (or ineligibility) is the organizational documents for Guinotte.

24 CFR §964.115 (in subpart B) sets forth the requirements for a RC. The RC must meet each of the specified requirements in order to receive official recognition from the Housing Authority and HUD, in order to be eligible to receive funds for RC activities and in order to receive stipends for officers. The requirements are as follows:

1. The RC must consist of persons residing in public housing and may represent residents of scattered sites, of contiguous row houses, of one or more contiguous buildings, of a development or of any combination of the above. 24 CFR §964.125 provides that any member of a public housing household whose name is on the lease and meets the requirements of the by-laws is eligible to be a member of a RC. Voting membership is limited to designated heads of households (regardless of age) and other household members who are 18 years of age or older and whose names appear on the lease.

Guinotte's by-laws provide that all persons over the age of eighteen who are lawful tenants of Guinotte Manor shall be members. This membership requirement is more restrictive than that in the regulations, as it would be possible for a person to be a lawful tenant and be younger than eighteen. Guinotte's by-laws allow all members to vote. Because the categories of members and voting membership are more restrictive, Guinotte does not meet the first criterion for qualification as a RC.

2. The RC must adopt written procedures (e.g., by-laws, a constitution) which provide for the election of residents to the governing board by the voting membership on a regular basis, but at least once every three (3) years. The written procedures must also provide for the recall of the resident board by the voting membership. The recall procedures must allow for a petition or other expression of the voting membership's desire for a recall election and must specify the percentage of the voting membership who must be in agreement in order to hold a recall election. This percentage cannot be less than ten percent (10%) of the voting membership.

Guinotte's by-laws provide for election of the Board of Directors at least every three years, depending upon the meeting attendance records of individual Board members. However, the by-

laws do not provide for recall of the board by the voting membership. Therefore, this requirement has not been satisfied.

3. The RC must have a democratically elected governing board, elected by the voting membership. The board must consist of at least five (5) elected board members. 24 CFR §964.130 sets forth the election procedures and standards. In the event that the RC fails to satisfy HUD's minimum standards for fair and frequent elections or fails to follow its own election procedures, HUD shall require the Housing Authority to withdraw recognition of the RC and to withhold resident services funds, as well as funds provided in conjunction with services rendered for resident participation in public housing. Additionally, the Housing Authority must monitor the RC election process and must establish procedures to appeal an adverse decision relating to a RC's failure to satisfy HUD minimum standards.

Guinotte's by-laws provide that the Board of Directors shall consist of between three (3) and five (5) persons, as determined by the Board of Directors. The election procedures set forth in the by-laws do not meet the election standards set forth in 24 CFR §964.130. Additionally, there is no information to suggest that these standards were met during any of Guinotte's elections. But regardless of the procedures, the possibility of fewer than five (5) directors is enough to disqualify Guinotte with regard to this requirement. Therefore, Guinotte does not qualify as a RC and is not eligible for official recognition as such.

Consequently, in order to receive official recognition as a tenant-representative group, Guinotte must qualify as a RMC. The requirements of a RMC are set forth in 24 CFR §964.120.

The regulations provide that a RMC must consist of residents residing in public housing and must have each of the specified characteristics in order to receive official recognition from the Housing Authority and HUD. These requirements are as follows:

1. The RMC must be a non-profit organization, validly incorporated under the laws of the state in which it is located.

The documents which are available (i.e., certificate of incorporation, articles of incorporation and by-laws) are sufficient to establish that Guinotte has been validly incorporated under the laws of Missouri and to verify that it was indeed set up as a non-profit organization.

2. The RMC may be established by more than one resident council, so long as each council approves the establishment of the corporation and has representation on the Board of Directors of the corporation.

Guinotte was established by individual residents, not by resident councils. Therefore, there is no need for representation from any resident council.

3. The RMC must have an elected Board of Directors, with elections to be held at least once every three (3) years.

Guinotte's by-laws provide for three-, two- and one-year terms for the Board members, depending upon the number of meetings attended during the previous twelve (12) months. Therefore, this requirement has been satisfied.

4. The RMC's by-laws must require the Board of Directors to include resident representatives of each resident council involved in establishing the corporation. The by-laws must also include qualifications to run for office, frequency of elections, procedures for recall and term limits if desired.

As stated above, Guinotte was established by individual residents. The by-laws set forth the qualification to hold office, with membership being the only such qualification. The by-laws provide for the frequency of elections based upon Board members' meeting attendance records. The by-laws provide for removal of Board members by vote of the other Board members, but not recall. The by-laws provide for removal of officers under the same procedures used for the removal of Board members. The by-laws do not provide for term limits. Guinotte's by-laws do not contain each of the specified provisions. Therefore, this requirement has not been satisfied.

5. The RMC's voting members must be heads of households, of any age, and other residents 18 years of age or older and whose names appear on a lease.

As stated previously, Guinotte grants membership only to lawful tenants over the age of eighteen. The by-laws define voting membership as all members. These provisions do not satisfy the requirement.

6. If a resident council already exists for the development, or a portion thereof, the RMC must be approved by the resident council board and a majority of the residents. If there is no resident council, a majority of the residents of the development must approve the establishment of the RMC for the purposes of managing the project.

There is no evidence to suggest that there is a resident council in existence at the Guinotte Development. Consequently, board approval would likely not be necessary. However, there is no information upon which to determine whether a majority of the residents approved Guinotte. Therefore, it is impossible to determine if this requirement has been satisfied.

7. The RMC may serve as both the RMC and the RC so long as the RMC meets the requirements for a RC.

Guinotte does not meet the requirements of a RC, therefore it cannot serve as such.

8. Additional concerns.

Guinotte is in LDP status. The LDP determination has not been reviewed and the circumstances surrounding it are only generally known. However, given the fact that a new tenant organization is being or has been organized at the Guinotte Development, and assuming that the new group

and/or other Guinotte residents have no intention of reactivating the old RMC, the correct course of action would be to formally dissolve the RMC. This would, at a minimum, entail filing with the Secretary of State articles of dissolution and obtaining a certificate of dissolution. Based upon the LDP regulatory provisions, it appears that the dissolution can occur at any time and need not wait until the expiration of the LDP.

The implications of all this are as follows. 24 CFR §964.205 provides that RCs and/or RMCs, as defined in subpart B of 24 CFR §964, are eligible to participate in a TOP. Therefore, since Guinotte does not qualify as either a RC or a RMC, neither does it qualify for TOP funding.

Additionally, because the Housing Authority must officially recognize a duly elected RC as the sole representative of the residents it purports to represent (24 CFR §964.18(a)(1)), an unofficial RC cannot be a representative of the residents, and the unofficial RC is not allowed resident input into decisions concerning public housing operations. 24 CFR §964.18(a)(7).

Based upon the information available, it appears that Guinotte does not qualify as either a RMC or a RC. Therefore, Guinotte is not eligible to receive TOP funding, or any other funding for that matter. Neither is Guinotte eligible to contract with the Housing Authority to perform management functions, such as the work which was previously done. 24 CFR §225(a). Finally, and perhaps most importantly, Guinotte does not have standing to give resident input into decisions concerning public housing operations.

Guinotte, in the event it chooses to remain in existence, should be requested to supply the documentation necessary to establish itself as either a RC, a RMC or both. Further, it should be requested to amend its organizational documents and institute all procedures as necessary to qualify itself as either a RC, a RMC or both. Finally, it should be requested to submit to the Housing Authority, for the Housing Authority's use and reliance thereon, a letter of opinion rendered by its counsel that, *inter alia*, it has satisfied the requirements of a RC, a RMC or both, that it is eligible for official recognition by the Housing Authority and by HUD, that it is eligible to receive funding from the Housing Authority in administering HUD programs, that its leaders are eligible to receive stipends, that (if a RMC) it is eligible to contract with the Housing Authority and that it is eligible to offer resident input into public housing operations.

The regulations regarding funding, contracting and the like are mandatory, not discretionary. Consequently, the Housing Authority has no discretion to waive these requirements for any entity for any reason. These requirements apply to any new, renewed or renegotiated contracts on or after September 23, 1994. All contracts (and all payments thereunder), all stipends and all reliance upon resident-representative input should be suspended until such time as the RCs and RMCs establish their compliance with these requirements, but in no event for more than ninety (90) days. Thereafter, all contracts, funding and the like will be terminated and the entities placed on the Housing Authority's ineligible list.

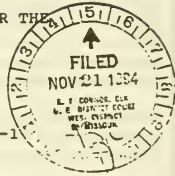
IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

DOLETHA TINSLEY, et al.,  
Plaintiffs,

vs.

HENRY G. CISNEROS, et al.,  
Defendants.

No. 89-0023-CV-W-1



RESPONSE OF HUD TO PLAINTIFFS'  
APPLICATION FOR FEES OF NOVEMBER 3, 1995

HUD prefaces its response with an acknowledgment that no fees are sought by Plaintiffs against HUD. The matter is between Plaintiffs and HAKC, subject to the Court's exercise of its discretion to award or deny fees. Nevertheless, since virtually all funding for HAKC comes from HUD, the government submits the following suggestions and concerns.

As Plaintiffs have conceded, they are entitled to seek more attorney fees in this case only when the fees directly relate to enforcement actions against Defendants. The fact is that no enforcement actions have occurred since last July. To the extent any fees are sought between April 1993 and July 1994, the recitation should be carefully scrutinized to determine which activities would have occurred as a part of monitoring the consent decree or taking part in the receivership, neither of which should subject HAKC to fees.

To the extent that this Court determines that Plaintiffs have identified lawyering activities that were not monitoring and were not part of Plaintiffs' counsel's participation in receivership

Document # 223

concerns, HUD asks the Court to undertake a balancing test in light of the circumstances of this case.

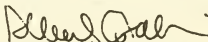
There is no question that Plaintiffs have been well served by their counsel in this case and will continue to be well served. HUD does not contest the ability or expertise of Ms. Levin. However, the fact remains that there is little money to go around when one examines the funds available to pay fees. A balance should be struck when considering reimbursement of Legal Aid beyond the level which is already funded for representing the poor.

There is an unfortunate truth here. There is not enough money to both fully fund Legal Aid and fully house the poor. Where reimbursement must come from a budget funded by the public to house the poor, the balance should be struck in favor of housing. HAKC faces significant budget shortages, as this Court is well aware. If any more attorney fees are awarded in this case, they should be at a reduced rate and be strictly scrutinized.

HUD does not suggest that Plaintiffs' counsel is unworthy of compensation beyond what is funded by the public. HUD suggests only that, because Legal Aid is funded to perform the activities for which fees are requested and because money is so scarce, less than full reimbursement is reasonable.

Respectfully submitted,

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Attorneys for HUD

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

DOLETHA TINSLEY, CORINE BATTS,  
BERTHA DOSS, LORINE DAWKINS,  
MARY VANN, AND LINDA ROBINSON,  
ON BEHALF OF THEMSELVES AND  
THOSE SIMILARLY SITUATED,

Plaintiffs,

v.

HENRY G. CISNEROS, SECRETARY  
OF THE UNITED STATES DEPARTMENT  
OF HOUSING AND URBAN DEVELOPMENT;  
THE UNITED STATES DEPARTMENT OF  
HOUSING AND URBAN DEVELOPMENT;  
TAG ASSOCIATES OF KANSAS CITY,  
INC., RECEIVER OF THE HOUSING  
AUTHORITY OF KANSAS CITY, MISSOURI  
AND THE HOUSING AUTHORITY OF  
KANSAS CITY, MISSOURI.

Defendants.

Case No. 89-0023-CV-W-1  
CLASS ACTION



DEPENDANT HOUSING AUTHORITY OF KANSAS CITY,  
MISSOURI'S SUGGESTIONS IN OPPOSITION TO PLAINTIFFS'  
APPLICATION FOR ATTORNEY'S FEES PURSUANT TO 42 U.S.C. §1988

ROUTED # 221

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

DOLETHA TINSLEY, CORINE BATTS,  
BERTHA DOSS, LORINE DAWKINS,  
MARY VANN, AND LINDA ROBINSON,  
ON BEHALF OF THEMSELVES AND  
THOSE SIMILARLY SITUATED,

Plaintiffs,

v.

HENRY G. CISNEROS, SECRETARY  
OF THE UNITED STATES DEPARTMENT  
OF HOUSING AND URBAN DEVELOPMENT;  
THE UNITED STATES DEPARTMENT OF  
HOUSING AND URBAN DEVELOPMENT;  
TAG ASSOCIATES OF KANSAS CITY,  
INC., RECEIVER OF THE HOUSING  
AUTHORITY OF KANSAS CITY, MISSOURI  
AND THE HOUSING AUTHORITY OF  
KANSAS CITY, MISSOURI.

Defendants.

Case No. 89-0023-CV-W-1  
CLASS ACTION

DEFENDANT HOUSING AUTHORITY OF KANSAS CITY,  
MISSOURI'S SUGGESTIONS IN OPPOSITION TO PLAINTIFFS'  
APPLICATION FOR ATTORNEY'S FEES PURSUANT TO 42 U.S.C. §1988

COMES NOW Defendant Housing Authority of Kansas City,  
Missouri (Defendant HAKC) by and through its undersigned counsel,  
and in opposition to plaintiffs' Application for Attorney's Fees,  
submits the following suggestions.

I. PLAINTIFFS' RIGHT TO SEEK ATTORNEY'S FEES UNDER  
42 U.S.C. §1988 IS MODIFIED BY THE CONSENT DECREE

In their suggestions, plaintiffs state, as a reason why they  
should be awarded attorney's fees, that they are the prevailing  
parties. That they are or were the prevailing parties is  
irrelevant to this inquiry inasmuch as the parameters of their  
right to seek attorney's fees have been set by the Consent  
Decree. While it is true that, absent an express waiver of

attorney's fees, even in the case of a consent decree, a prevailing party will still retain the statutory right to seek attorney's fees. Ashley v. Atlantic Richfield Co., 794 F.2d 128, 138-39(3rd Cir. 1986). Such is not the case in this matter.

As plaintiffs state, plaintiffs, Defendant HAKC and the other Defendants entered into a Consent Decree on November 25, 1991, (the Decree). The Decree provided, in §22., that:

"HAKC will pay \$95,000.00 to plaintiffs in full compensation for their attorney's fees. . . . Plaintiffs will not thereafter be compensated for any work in monitoring this Decree, except that, should plaintiffs obtain from the Court further orders for the enforcement of this Decree, their right to seek fees, expenses and costs including the costs of any court-ordered notification to the class members for such work against either or both HAKC and HUD is reserved."

As seen from the terms of the Decree as stated above, plaintiffs expressly agreed that their attorney would not be compensated for monitoring the Decree. The only exception to the waiver of attorney's fees is in the event that further enforcement orders are obtained. Then, and only then, may plaintiffs seek additional attorney's fees. And then only insofar as such fees relate to the specific enforcement action.

**II. THE AWARD SOUGHT BY PLAINTIFFS IS NOT REASONABLE NOR IS IT ALLOWABLE UNDER THE TERMS OF THE CONSENT DECREE**

Plaintiffs seek an award of \$172,508.40 for attorney's fees. Plaintiffs claim that this amount is both reasonable and allowable under the terms of the Decree. As stated above, the only fees to which plaintiffs may be entitled are those which directly relate to enforcement actions against either or both Defendant HAKC and HUD. This construction is not only apparent from the language of the Decree, but also from the interpretation

given it by the Court in its April 15, 1994, Order Awarding Attorney Fees. The Court stated therein as follows:

"It is clear from this language [as quoted above] that Plaintiffs are not entitled to receive attorney fees for work done in monitoring the Consent Decree. . . . Thus, the Court finds that Plaintiffs should be awarded attorney fees only for work done specifically on the contempt motion. . . ."

Further, the Court readdressed this issue in its June 13, 1994, Order, stating as follows:

"The court already addressed this argument in the April 15, 1994 Order and at the risk of redundancy, the court will reiterate the explanation of paragraph twenty-two: 'At the time the parties entered into the Consent Decree, the parties anticipated that Plaintiffs would continue to monitor Defendants' compliance with the Consent Decree and agreed that Plaintiffs would not be entitled to any attorney fees associated with such monitoring. However, should such monitoring lead to the determination of noncompliance, additional attorney fees would be awarded to Plaintiffs in connection with the contempt motion. Thus, the Court finds that Plaintiffs should be awarded attorney fees only for work done specifically on the contempt motion.'"

The Court went on to state as follows:

"This explanation recognizes that paragraph twenty-two distinguishes between monitoring and gathering evidence for a contempt hearing. Plaintiffs cannot receive attorney's fees for monitoring, but plaintiffs can collect reasonable attorney's fees for the time they spent collecting evidence to present at a contempt hearing. . . . As explained earlier, paragraph twenty-two of the Consent Decree prohibits plaintiffs from receiving attorney's fees for the costs of monitoring compliance."

Upon examination of plaintiffs' attorney's time records attached to plaintiffs' suggestions, it is readily apparent that plaintiffs are seeking attorney's fees both for enforcement actions (contempt proceedings), which fees are allowed under the Decree, and for monitoring activities, which fees are *NOT* allowed

under the Decree. In fact, upon inspection it is clear that the bulk of plaintiffs' request for fees is for monitoring.

As the Court has iterated and reiterated to plaintiffs, they are not entitled to attorney's fees for monitoring activities. Plaintiffs' counsel's rendering of the Court's April 15, 1994, Order that ". . . plaintiffs may be compensated for time expended on this case should plaintiffs obtain [sic.] further orders for the enforcement of this Decree. . . ." is disingenuous. The Court has clearly stated that plaintiffs may seek attorney's fees only for such time as is spent in obtaining further enforcement orders. Pursuing and obtaining any such enforcement orders does not open up the door for compensation thereafter for all matters related to the Decree, but only for the enforcement actions.

Plaintiffs' counsel's statement that she has ". . . eliminated any request for compensation for time that was merely monitoring the Decree such as reviewing a quarterly report that had no erroneous or objectionable information. . . ." is clearly an attempt to blur the lines between monitoring and enforcement, which lines the Court has established via its Orders of April 15, 1994, and June 13, 1994.

Plaintiffs' counsel's statement that "[a]ll of counsel's time . . . was necessary to insure [sic.] that enforcement orders entered by this Court were carried out . . ." is a rather tortured interpretation of counsel's activities as non-monitoring activities, as is evidenced by counsel's own time records. Upon inspection, plaintiffs' counsel's records reveal that she is claiming time for, inter alia, the following: 5/04/93 ("Review

quarterly report and attachments compare with Consent Decree; review correspondence in file"); 5/11/93 ("Review quarterly report; call to J. James"); 7/27/93 ("Calls to HAKC; calls to clients; review Consent Decree and letter from J. James"); 2/17/94 ("Calls to HAKC; calls to clients"); 4/05/94 ("Call to HAKC; call to clients"); 7/03/94 ("Review Proposals"); 7/04/94 ("Review Proposals"); 7/05/94 ("Review Proposals"); 7/12/94 ("Review proposals; review senate bill on pub. housing; more investigation of Receiver applicants"); 7/18/94 ("Interviews of receiver applicants"); 7/19/94 ("T.B. Watkins groundbreaking; mtg. w/Bert Berkley; disc. w/HAKC staff"); 7/20/94 ("Disc. w/L. Doston; review statutory changes re: relocation"). This list is far from exhaustive, but it is illustrative of the fact that plaintiffs' counsel's activities have been far more extensive than ". . . the time spent collecting evidence to present at a contempt hearing . . .", which time is the *only* time which is compensable under the Court's June 13, 1994, Order.

Although it is commendable that plaintiffs' counsel takes time to review senate bills on public housing, and enviable that she has time to do so, attorneys do not, as a general rule, bill their continuing legal education costs directly to their clients. Consequently, absent additional details, there appears to be no reasonable relationship between an item such as reviewing senate bills and gathering evidence to present at a contempt hearing.

Of additional concern is plaintiffs' counsel's entry for items which appear unrelated to monitoring activities, much less enforcement activities, under the Decree. These items include,

inter alia, plaintiffs' counsel's entries for the following dates: 9/14/93 ("Calls to Guinotte"); 9/23/93 ("call re: Guinotte"); 10/01/93 ("meeting w/K.U. students"); 10/06/93 ("Review Urb. Revi"); 10/08/93 ("meeting with Guinotte tenants"); 10/12/93 ("review materials for Washington, D.C. meeting on demolition & other regulations"); 10/13/93 ("Meeting w/HAKC regarding Wayne Minor [sic.]"); 10/14/93 ("letter regarding Wayne Miner Hope I grant"); 10/15/93 ("Meeting in Washington, D.C. with Cisneros & Shuldiner regarding Guinotte demolition . . ."); 10/27/93 ("URD summary for Judge Larsen regarding Watson Groves"); 10/29/93 ("Meeting w/Guinotte"); 11/01/93 ("Draft letter to Wayne Miner & HUD; calls to HUD regarding Wayne Miner"); 11/03/93 ("meeting at Guinotte (site visit)"); 11/04/93 ("call to clients regarding Guinotte Manor"); 11/05/93 ("Meeting w/Acorn"); 11/09/93 ("Call from K.U."); 11/11/93 ("Call from K.U."); 11/15/93 ("discussion w/HAKC regarding Guinotte"); 11/18/93 ("Meeting w/Heritage House"); 12/15/93 ("workshop for tenants on receivership"); 1/21/94 ("Calls to HUD Washington (re: Guinotte)"); 2/07/94 ("Daycare meeting at HAKC"); 2/23/94 ("Review GLAD app"); 3/03/94 ("call from Guinotte"); 3/08/94 ("Meeting w/Guinotte tenants; meeting at Guinotte w/Shuldiner"); 3/14/94 ("Riverview-Guinotte RMC; . . . meeting w/Guinotte RMC . . ."); 3/28/94 ("Meeting w/Guinotte RMC"); 5/05/94 ("Empowerment zone meeting"); 5/19/94 ("Mtg. w/Marchman"); 8/31/94 ("ltr. to A. Castellani re: MROP"); 9/26/94 ("mtg. w/K.U. students on receivership; mtg. w/Guinotte residents re: URD"); 9/27/94 ("ltr. to HAKC re: Guinotte Comm. Proposal; review URD agreement");

9/28/94 ("disc w/D.Boody re: Guinotte Task Force"); 9/29/94 ("call to housing law proj. re: URD legislative proposals"); 9/30/94 ("Mtg. w/Guinotte architects"); 10/03/94 ("Mtg. w/Guinotte Task Force; mtg. w/E. Jones, L. Doston & P. Olsen"); 10/04/94 ("Call to Guinotte architects"); 10/06/94 ("Review architect site plans for Guinotte; call to C. Flowers, E. Jones"); 10/07/94 ("Call to E. Jones, C. Flowers, D. Boody; E. Wallace"); 10/12/94 ("review Concord survey for Guinotte . . ."); 10/18/94 ("prepare for 10/20 G.M. Task Force mtg."); 10/19/94 ("Guinotte Manor Task Force mtg."); 10/20/94 ("Guinotte Manor resident mtg @ Don Bosco"); 10/21/94 ("mtg. w/E. Jones & Guinotte Manor Task Force"); 10/24/94 ("mtg. w/Guinotte Manor Task Force . . ."); 10/25/94 ("call from C. Flowers"); 10/26/94 ("call from C. Flowers"); 10/27/94 ("call from C. Flowers; mtg. w/Floyd May"); 10/31/94 "mtg. w/E. Jones & Guinotte Manor Task Force").

Unfortunately, as long as this list is, it is not comprehensive. There are many other items of questionable relation to the Decree for which plaintiffs' counsel is seeking compensation. Others include entries of the following dates: 6/23/93; 7/19/93; 8/02/93; 8/03/93; 10/21/93; 10/22/93; 11/19/93; 12/22/93; 2/03/94; 3/31/94; 5/10/94; 5/31/94; 6/22/94; 7/11/94; 7/13/94; and 9/19/94. These items are unrelated to the Decree and the underlying substantive issues. Yet plaintiffs are applying to the Court for an award of attorney's fees under the Decree. Defendant HAKC should not be required to subsidize plaintiffs' counsel's operations in this manner. See Davis v. City and County of San Francisco, 976 F.2d 1536, 1542 (9th Cir. 1992),

wherein the court stated that matters which are not related to the issues cannot be claimed in an application for an award of attorney's fees.

Yet another concern is the appearance of duplicative efforts on the part of plaintiffs' counsel. Contemporaneously with the submission of plaintiffs' application for attorney's fees in the instant matter, plaintiffs also submitted an application for attorney's fees under a consent decree in another matter. Copies of plaintiffs' counsel's time records in that matter are attached hereto as Exhibit A and incorporated herein by this reference.

Plaintiffs appear to be requesting payments for attorney's fees for duplicative efforts involving the same activities on the same days for the following entries: 7/26/93 (calls to HAKC); 9/01/93 (call to and discussion with J. James); 11/16/93 (discussion and meeting with HAKC); 11/22/93 (meeting with HAKC, meeting with J. James); 1/12/94 (meeting with clients); 1/14/94 (discussion with clients, meeting with tenants); 2/02/94 (calls to HAKC and clients); 2/03/94 (calls to clients); 4/06/94 (meeting with P. Schwach, meeting with HAKC); 4/13/94 (discussion with clients, call from clients); 4/20/94 (meeting at HAKC, meeting w/ Frewen & J.E. Dunn); 6/09/94 (discussion with clients, call from clients); 6/21/94 (call to P. Schwach, call to L. Talley); 6/23/94 (discussion with clients, call from clients); 7/13/94 (meeting with clients, meeting with Receivership Tenant Committee); 7/28/94 (call to M. Arnold); 8/03/94 (meeting with Frewen & residents, Receivership Tenant Committee meeting); 8/31/94 (call to A. Castellani, letter to A. Castellani); 9/07/94

(discussion with clients); 9/09/94 (meeting with E. Jones and J. Lines, discussion with E. Jones and J. Lines); 9/14/94 (meeting with E. Jones); 9/30/94 (call to E. Jones); 10/21/94 (meeting with E. Lipscomb, A. Castellani and E. Jones; discussion w/ S. Colaco, call to S. Colaco). Additionally, plaintiffs' counsel's time records for the instant case contain double entries for 2/24/94 and 3/17/94. Again, this list is not exhaustive. Although it is feasible that these potential double entries could indeed have involved separate and distinct activities for the two different matters, without additional detail, it is impossible to make such a determination.

These time records illustrate that plaintiffs' counsel spends time above and beyond that typically required to monitor compliance under a consent decree. Defendant HAKC believes that the type of transactional work in which plaintiffs' counsel continues to engage extends the nature of her representation of her clients far beyond that required to monitor compliance with the Decree. And while plaintiffs' counsel is certainly free to define her role with her clients as she chooses, Defendant HAKC should not be required to pay for this extended role. See Eirhart v. Libbey-Owens Ford Co., 996 F.2d 846 (7th Cir. 1993), wherein the court stated that the burden is on the plaintiffs to document monitoring efforts and eliminate fees which are unnecessary and wasteful. Plaintiffs have not met this burden.

If plaintiffs' counsel wishes to be compensated in accordance with the prevailing market rate in the community, even though she works for a nonprofit legal services program, then she

must temper her zeal with the same judgement which most other attorneys in her same community are forced to exercise. See Planned Parenthood of Minnesota, Inc. v. Citizens for Community Action, 558 F.2d 861, 871 (8th Cir. 1977) (plaintiffs are not entitled to endlessly accumulate exorbitant legal fees); Hall v. Roselle, 747 F.2d 838, 841 (3rd Cir. 1984) (plaintiffs cannot abandon self-restraint or careful billing judgment merely because of the expectation that the obligation to pay will be shifted to the losing party; plaintiffs must exercise care, judgment and ethical sensitivity in billing in order to exclude unnecessary hours); Di Filippo v. Morizio 759 F.2d 231, 234 (2nd Cir. 1985) (matters which cannot be properly billed to a client also are not properly billed to an adversary).

Defendant HAKC has been instructed, through its Receiver, by the Court, to conduct its operations like a business. It is, after all, a corporation. And before it can efficiently and effectively provide safe, decent and sanitary housing to those people it is intended to serve, it must first ensure that it has a secure, well-functioning corporate structure. Part of that structure is the close scrutiny of payment for services rendered to it. Therefore, if Defendant HAKC, as a well-functioning corporation, were to engage outside counsel, or any other contractor, to perform services on its behalf, it would require a much greater level of detail and specificity than that offered by plaintiffs' counsel. For purposes of the payment of attorney's fees, Legal Aid of Western Missouri (LAWMO) is no different from any other contractor, and it should be held to the same standard

now in effect at Defendant HAKC's offices. See Di Filippo, 759 F.2d 231, 236 (court must examine the fee hours in detail to determine the value of the work product to the client in light of the standards of the private bar). When held to this standard, the benefit to the clients resulting from plaintiffs' counsel's excessive hours is highly questionable. Therefore, Defendant HAKC should not be required to pay plaintiffs' counsel based upon these time record statements.

Additionally, plaintiffs ask that their attorney's fees be paid at one standard hourly rate of \$120.00. Defendant HAKC disputes the reasonableness of awarding this standard rate for all of plaintiffs' counsel's various activities. Plaintiffs' counsel is required to deliver her services in a cost effective manner. Missouri v. Jenkins, 491 U.S. 274, 288 (1989). This means that she cannot bill her numerous non-lawyer activities at the same rate as her lawyer activities. Davis, 976 F.2d 1536, 1542. Items such as drafting pleadings, legal documents and legal memoranda, researching legal issues, court appearances, and the like may be compensated at a higher, attorney rate. However, items such as investigations, tours, interviewing staff, reviewing reports and correspondence and conferences with co-counsel and/or a special master should be compensated at a lower rate. Wuori v. Concannon, 551 F.Supp. 185, 195 (D.C. Me. 1982). Any paralegal/clerical/secretarial tasks cannot be billed at a lawyer rate, even if performed by a lawyer, but must be billed at a lower rate. Lipsett v. Blanco, 975 F.2d 934, 940 (1st Cir. 1992). Therefore, plaintiffs' counsel's time records for items

compensable under the Orders of April 15, 1994, and June 13, 1994, should be categorized as to type of activity and compensated at varying rates accordingly.

While Defendant HAKC does not dispute any attorney's fees which it may *rightly* owe in accordance with the Decree, it does dispute plaintiffs' counsel's attempts to use it to subsidize LAWMO's operations. The Decree allows plaintiffs' counsel to be adequately compensated for her time in pursuing enforcement orders, but she should not be allowed to use this as a device to generate a windfall for LAWMO. See Daly v. Hill, 790 F.2d 1071, 1084 (4th Cir. 1986) (plaintiffs' counsel must be adequately compensated without resulting in a windfall; counsel must exercise sound billing judgment).

### III. PLAINTIFFS' CHARACTERIZATION OF THE CREDIT DUE TO DEFENDANT HAKC IS INCORRECT

Plaintiffs state that the "April 15, 1993 [sic. 1994]" Order determined that plaintiffs should reimburse Defendant HAKC in the amount of \$27,820.80, or in the alternative, issue a credit to HAKC for future fees. Unfortunately, plaintiffs conveniently overlook the more crucial part of the Order which required Defendant HAKC to pay attorney's fees in the amount of only \$12,439.20. The amount of the reimbursement was based upon the assumption that Defendant HAKC had paid a total amount of \$40,260.00 to plaintiffs.

However, as of April 1, 1994, as plaintiffs' counsel was well aware, Defendant HAKC had actually paid plaintiffs a total amount of \$56,621.50, for an excess of \$44,182.30. See the attached Exhibit B, Schedule of Payments, incorporated herein by

this reference. This payment schedule was based upon plaintiffs' counsel's fee statement to Mr. Joseph James, and was drafted by plaintiffs' counsel's executive director. See the attached Exhibit C, incorporated herein by this reference.

On June 24, 1994, Defendant HAKC, through its interim receiver Paula Schwach, requested plaintiffs' counsel either to pay the amount in full or to enter into a repayment agreement. See the attached Exhibit D, incorporated herein by this reference. Plaintiffs' counsel responded on June 29, 1994, stating that plaintiffs' counsel would issue a credit, said credit to be issued at an interest rate of 3.45%. See the attached Exhibit E, incorporated herein by this reference.

Contrary to the statement in plaintiffs' suggestions, plaintiffs never issued a credit to Defendant HAKC. Merely stating, via letter, that plaintiffs' counsel will issue a credit does not constitute the issuance thereof.

As for plaintiffs' counsel's suggestion that she would be agreeable to an interest rate of 3.45%, the April 15, 1994, Order stated, in pertinent part, as follows:

" . . . [plaintiffs] must . . . issue a credit to HAKC in that amount which shall draw interest at the same rate of interest that Plaintiffs requested and received from HAKC for the unpaid balance of original attorney fees in the Consent Decree."

The Court's footnote to this provision stated as follows:

"The Court was unable to determine this interest rate. Accordingly, the parties are to consult and come to an agreement concerning such."

The parties have not yet come to terms regarding the interest rate. Defendant HAKC paid attorney's fees to plaintiffs' counsel

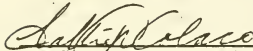
on two separate accounts, each with a different interest rate. Consequently plaintiffs' counsel's offer of a credit, and that not even the correct amount of credit, issued at only one interest rate, and that the lower of the two, without regard for the different accounts with their differing interest rates, *as requested and received by plaintiffs' counsel*, is not acceptable to Defendant HAKC.

Defendant HAKC has prepared a schedule of its payments to and the resultant credits to be issued by plaintiffs' counsel. See attached Exhibit F, incorporated herein by this reference.

WHEREFORE, Defendant HAKC requests the Court, if it enters an award for attorney's fees, to enter such award *only* for such time as was spent by plaintiffs' counsel in collecting evidence for a contempt hearing, at varying rates from \$120.00 per hour down, depending upon the type of work done by plaintiffs' counsel, and that plaintiffs' request for attorney's fees relating to monitoring activities and such other activities as are unrelated to the Decree, along with any items of duplicative effort, be denied in accordance with the Court's Orders of April 15, 1994, and June 13, 1994.

FURTHER, Defendant HAKC requests any such award to be credited in an amount of \$44,182.30, said credit to be apportioned in accordance with Exhibit F, and to draw interest at those rates as also shown on Exhibit F.

Respectfully submitted,



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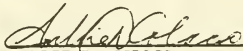
I hereby certify that a true and accurate copy of the above and foregoing was mailed, postage prepaid, this 15<sup>th</sup> day of November, 1994, to the following:

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SALLIE D. COLACO  
General Counsel

Mr. GEKAS. We thank the lady. We will yield to the gentleman from South Carolina there, Mr. Inglis.

Mr. INGLIS. Thank you, Mr. Chairman.

Mr. Adams, you were making a list, you had a couple more items on your list.

Mr. ADAMS. I had one more.

Mr. INGLIS. What was the other condition of the extension of the grant?

Mr. ADAMS. That the recipient shall submit the LSC a plan to address the oversight of the program's paralegal staff and other legal work performed by its contract attorneys. In response to that, I just took an insert from a prior monitoring visit. LSFJC intake staff who are not designated paralegals are dedicated to making legal services available to the poor and serve as a primary strength of the program. There have been positive impressions of them in previous reviews, and they continue to be highly motivated and take the lead in interacting with the legal and client community. The diligent efforts of these paraprofessionals directly impact access to the program and the quality of legal services. The paralegals are able to function effectively with a limited amount of supervision, and their level of motivation and competency is such that one is left with the impression that the program could function without either the director or the board.

So I just questioned the reason for the special condition.

Mr. INGLIS. Let me ask, Mr. Robb, there are three people here who have identified significant problems with Legal Services Corporation, all three of whom have been very much on the inside of that. Give you any pause?

Mr. ROBB. Any time you have responsible people who have criticism, I think they need to be listened to; but it is a far cry from that to say that this whole problem is wrong. I have heard individual instances of complaints here as I have heard for many years. But the real issue for me and my group of Republican lawyers is, what is the program doing as a whole? I have heard almost nothing about that here this morning. All I have heard is some of the anecdotal dysfunctions that the chairman referred to. I have not heard anybody with statistics or any kind of a reasoned analysis saying that the program just is not working. Mr. Boehm came the closest to it, and I disagree sharply with his views.

Mr. INGLIS. Let me ask you this. Ms. Colaco talked about how funds could have been used for other things, and I think that Ms. Searer had the same point. If we did such a study, do you think we would not be meeting the needs of somebody that needs legal services because we were spending it on a study?

Mr. ROBB. I am sorry? Are you saying that we should not make studies?

Mr. INGLIS. I inherently distrust all kinds of fancy studies because I figure, while we are paying all of these fancy consultants, somebody's needs are not being served. That is usually what happens and then nobody reads the study. I am editorializing on that.

Ms. Colaco, you had something very interesting to say about legal services. I cannot remember what you said, but you said that it is well-designed to perpetuate someone's dependence on assist-

ance. Do you want to elaborate on that? I was interested in that point. Why is that?

Ms. COLACO. Well, my observation and my experience was that people—and I was not the only one at the housing authority who was trying to do this. But people who were trying to make positive, meaningful change, trying to do things in terms of economic development for the disadvantaged communities, were kind of shoved aside. We were not the right agenda. The right agenda was to promote and continue dependency.

Mr. INGLIS. Let me ask you this. I have a theory about that. My theory is that really it is the part of lawyers loving to litigate and feeling that the best way to do things is to demand rights. Nobody insists on responsibilities. Rather we as lawyers insist on rights, and we love litigation because it pays our fees, I guess, and generally we just enjoy it because it gives us something to do.

I wonder if that is part of what is going on here, is this entitlement mentality combined with the rights mentality of lawyers means that we create a situation where we almost need a lawyer on every block, sort of the block lawyer, to deal with every legal question because everybody has rights on the block and they should assert those rights. What I have seen in legal services is, as long as we have that kind of mindset, there is no way to move toward a system where you do not have full-blown adversarial proceedings, where you have conciliation services, and that kind of thing. Do you agree with that?

Ms. COLACO. That was my experience. I attempted to initiate an ombudsman program. My position, and I stated this publicly, was I was there at the housing authority to work myself out of a job. I thought the most important thing was to get the housing authority and the public housing residents into a position where they could solve their own problems together. When I attempted to do that, legal services pushed me out of the way.

Mr. GEKAS. The time of the gentleman has expired. The Chair recognizes the gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. ROBB, you vaguely referred to the effect of the cuts that were made. Could you elaborate on what effect the cuts in funding have had to the client population?

Mr. ROBB. It is too early to tell, in my opinion, what that full impact is. Some steps have already been taken. The full impact will not be known, I think, for a year or two until it all shakes out. I can say, in my State and the programs that I am familiar with, the cuts have been more devastating than the numbers would indicate.

For example, we had in New Mexico some 38 lawyers working in poverty programs. We have lost some 10½. But the cuts have really hit the program much worse than that because of the fact that many of the lawyers that have left have been very experienced lawyers, because the ones who are left are wondering whether they are going to have any jobs. There is no longevity. There is no kind of assurance, and so we are finding that many of the lawyers are not going to be able to stay with the program. They are looking for other opportunities. The turnover is enormous.

All I can say, I cannot give you the statistics except to say this. I have made some personal calculations of what I think is going to

happen. I think of the 14,000 cases that the New Mexico programs handled in 1993, I believe that this year we will find that probably at least 3,500 of those cases will no longer be handled.

We have the most active recruiting program in the country that I know of in New Mexico to get lawyers to fill the gap. We had an associate justice of the New Mexico Supreme Court that headed the study committee that came up with the idea of forming a Lawyers Care to try to have lawyers stand in the gap. We have 500 lawyers who have volunteered to handle those cases. Some of them are very long cases. The most that is going to be expected of those lawyers is about one a case.

I am saying that with that active recruiting program we are only handling one-seventh of the load of cases that the legal services program will have to get rid of. So it would take seven times the amount of lawyers we have recruited by enormous efforts in order to be able to try to meet the need.

Mr. SCOTT. Let me get a question, a question was made about how you get a poverty law degree. Could you speak to the qualifications of the lawyers that are volunteering compared to the lawyers that would be long-term staff members of a legal aid program?

Mr. ROBB. The lawyers who are volunteering are generally younger lawyers, but most of them are very good lawyers in the fields in which they practice. But to take a lawyer who does estates and trusts and put him involved in the kinds of problems that poor people have on the street is like taking a fish and putting him out of water. It takes many, many more hours for that lawyer to handle that problem.

Of course, when you get into the problems like the entitlement programs and that sort of thing where the regulations are defying any good lawyer's skills, in my view it will take much longer for a lawyer to handle the same case in the average situation than it would for the legal services lawyer.

Mr. SCOTT. Would he have the same competence? If a lawyer is handling a section 8 case and it is the first one that he has handled, although he is a very good lawyer, would he have a clue what to do?

Mr. ROBB. I think he would have to do a lot of studying, and I think we are underplaying the role and the capabilities of the legal services lawyers. They have not only their own skills, and they are considerable and many of them have been with the program many years, but they can look to the most senior lawyer in the program or they can call a lawyer in another State or another area and get help. It is a network that helps to provide the expertise that maybe even the young lawyers in the poverty program may lack.

Mr. SCOTT. On the 500 volunteers that you obtained, how many were willing to take complex cases that would involve long-term commitments?

Mr. ROBB. Almost none. Basically they were asked, what would you be willing to contribute? And my sense, I did not compile the answers, but my sense is that the average lawyer would be willing to spend between 3 and 8 hours a year doing that kind of work.

Mr. SCOTT. Who would handle the complex cases?

Mr. ROBB. The ones that are fee-generating, and some admittedly are fee-generating, I think the private bar and the public interest

firms will take. But those are a small fraction of cases. The others I do not know where they are going to go. Right now I do not have any good answer for that.

Mr. SCOTT. In the list of priorities we have heard criticisms about the class action cases. It seems to me that that is a very good use of the resources. Do you have a comment on that?

Mr. ROBB. I do not want to debate that. The Congress has spoken. My personal view is that I think that, if you could eliminate some of the abuses that have come from class actions, and there have been some admitted abuses, I think a class action is a very efficient way of handling the care of multiple clients who have the same problem.

Mr. SCOTT. Thank you, Mr. Chairman.

Mr. GEKAS. The gentleman from Rhode Island is recognized for 5 minutes.

Mr. REED. Thank you, Mr. Chairman.

Mr. Robb, I apologize because I had to leave in the middle of the hearing, but I come back to see the New Mexico Republican Lawyers for Legal Services, which is not an oxymoron, but from what we have heard this year it might be close. Let me get this right. These are Republican lawyers in New Mexico who have bound together to preserve and implement legal services in the State of New Mexico?

Mr. ROBB. Yes, that is right. That is somewhat unusual because we have a State where the overwhelming number of lawyers are Democrats. To get 40 Republican lawyers to agree on anything is quite a job.

Mr. REED. So this informal group is basically a group to support the existing legal service operations in the State by good words and also their own deeds; is that correct?

Mr. ROBB. Yes. It is a commitment to support what Congress has agreed to support, that is a brandnew program that has been crafted by the Congress to embody the restrictions and what people call sometimes reforms in the program.

Mr. REED. Now, these reforms basically were implemented beginning April of this year. In fact some of them are not effective until August of this year. Participation in class actions is still legal until August 1996. I think it is your view in your testimony that any fair comment on these reforms would take more than 2 months or so; is that accurate?

Mr. ROBB. I think that is an understatement.

Mr. REED. There have been discussions, and this is the fourth hearing we have had on Legal Services Corporation, of the litigious nature of Legal Services grantees and the fact that it seems the only motivating factor is to go to court and tie things up in court. In your experience as a close observer and participant, is it any more litigious than the commercial world or any less?

Mr. ROBB. I think it used to be. I think in the earlier days of the legal services program it was more litigious. But the funding cuts that have taken place have caused a rethinking of the mission of legal services. And particularly in the last year or two, I have seen a great change in the attitudes of lawyers that are looking more to settlement, to compromise, to mediation, following the lead of

the bar, that arbitration, conciliation, mediation is a very important tool.

Mr. REED. Thank you, Mr. Robb.

Mr. Chairman, that is sufficient. I yield back my time. Thank you. Excuse me, if I may. Mr. Scott had to leave. He would like to ask those individuals or legal services programs who are the subjects or the comments made by these witnesses be able to respond to the specific charges raised.

Mr. GEKAS. Without objection. We welcome any additional statements, et cetera, within the time limits that the gentleman himself has uttered in the beginning of the hearing.

Mr. REED. Which, no less than 5 nor more than 10 days? Thank you, Mr. Chairman.

Mr. GEKAS. I would like to follow up on some of the statements and questions that have been asked. I wondered in the testimony of Ms. Searer, when did Louisiana become involved in the kidnapping case? Or is it New Orleans?

Ms. SEARER. It is a Federal case. It was heard in the Western District of Michigan because the children were taken from Michigan. They were returned to their family.

Mr. GEKAS. I see. Then you said that the director of LSC there wanted to make more of it or wanted to do something extra; is that correct?

Ms. SEARER. What happened was that, during the time that the children were still missing, he sent out a fundraising letter. I have it here, in which he intimates that these children and the family of these children were clients of migrant legal aid.

Mr. GEKAS. I will ask that, without objection, that become a part of the record, that letter, unless it is already a part of your statement.

Ms. SEARER. Which is not true. They were not even eligible to be clients. He was using them.

Mr. GEKAS. Do you know whether or not the Legal Services Corporation based in Washington, the board, ever knew of anything like that had occurred?

Ms. SEARER. Not this exact thing, because my clients have a cause of action against this program. But other things, yes, I have complained.

Mr. GEKAS. I understand. But in that instance, the board in Washington, DC, never, as far as you know, made any kind of inquiry stance or reprimand of their director, if indeed he was wrong in trying to do a fundraiser for these kids; is that correct?

Ms. SEARER. It was not a fundraiser. He wrote a fundraising letter for a program he has been mismanaging for 8 years.

Mr. GEKAS. I am saying, did the LSC headquarters here in Washington ever take any action on what you consider—

Ms. SEARER. I did not complain to LSC about his fundraising tactics.

Mr. GEKAS. To your knowledge did they ever try to do corrective action?

Ms. SEARER. No, I mean they do not even do criminal work. This is a criminal case.

Mr. GEKAS. I understand. I think I have gotten my point across, even if you don't.

What I was trying to say here is that there is a big gap between what the LSC director did in your area and the directorship, leadership or monitorship of the Legal Services Corporation in Washington.

Ms. SEARER. Sure, I understand that. But people like him need to be monitored. They are going crazy.

Mr. GEKAS. Mr. Robb, you mentioned that your group commended Congress for these restrictions. You were going to follow them 100 percent just like you said. Then you applauded the fact that you set up a different entity so that you would not have to follow through on restrictions; isn't that correct?

Mr. ROBB. I did not say we applauded the restrictions. I personally was not in favor of some of the restrictions. I am saying the issue was closed with this Congress.

Mr. GEKAS. Because the issue was closed, you felt it was all right to set up an entity to side step the restrictions; is that not correct?

Mr. ROBB. Oh, absolutely. Yes, sir. I do not think Congress said that nobody can ever do these kinds of cases. All they said was we will not provide the money to do it.

Mr. GEKAS. But the point is that the restrictions then are being evaded in one way or another; is that correct?

Mr. ROBB. I do not consider that an evasion at all.

Mr. GEKAS. If it is done legally, it is not evasion?

Mr. ROBB. Of course not. If it is done legally and properly, it is not an evasion.

Mr. GEKAS. Ms. Searer or Ms. Colaco, do you have a response to whether or not class actions are beneficial to the poor?

Ms. SEARER. I think in the past they have been, basically like field sanitation cases. But they have gotten out of control like with this Farmers Home case. That case could have been settled. There are 20,000 pages of administrative record and untold attorneys fees, and now we have migrants living on the street because farmers will not borrow money to build housing so they could live in it. That cuts directly across their interests.

Mr. GEKAS. Mr. Robb, do you still believe that class actions are a necessary part of Legal Services Corporation business?

Mr. ROBB. I think that that function needs to be performed. Congress has said it cannot be done by Federal funds. I think that, if it is properly supervised, it is a very, very efficient way to resolve problems; but there are abuses and there have been in the commercial area. You have been involved in that in the Judiciary Committee and others in the Congress about the whole problem of commercial class actions where lawyers get involved with heavy attorney fees and things like that. That has not been a problem, I do not think, for legal services.

Mr. GEKAS. The time of the Chair has run out. I will indulge in a second round, if anyone wants to, for 2 minutes. Mr. Inglis is recognized for 2 minutes.

Mr. INGLIS. Thank you, Mr. Chairman.

Mr. Adams, you might remember that in May 1995 we had a hearing at which Mr. Forger, the President of Legal Services, testified. And of course this was in the context of all the great disturbance on the other side of the aisle about how we were eliminating legal services by a block grant consistent with the Medicare kind

of thing that any time you change, you are eliminating. But as I recall, Mr. Forger was very interested in making the point that these are autonomous boards already and, therefore, to block grant was not necessary. We already have independence.

He said: There are 323 programs out there. Each has an independent locally selected board by the local bar association. They hire their own lawyers. They hire a local director. They set their own priorities.

Is your experience consistent with what Mr. Forger said in May 1995?

Mr. ADAMS. We have not been directly told what we could or could not do. But I will make the comment that because of the implications from my interview and just the mention of these special conditions after all the questions we asked—excuse me—we answered, our board just felt we had enough. We have decided to consolidate with another program, and we just feel like it is not worth it.

Mr. INGLIS. So in other words maybe it is not quite as autonomous as the good gentleman was describing. Maybe Washington has a little bit more command and control of it. And maybe, just maybe, there is a big difference between that old system and the reformed system, Mr. Robb, that we really wanted to get, which was a block grant. But because of the Medicare kind of thing, what you do is you say they are eliminating it rather than they are block granting it. It is true, technically, it is an elimination of an entitlement program and creation of a new program.

It works well on television. You have some forlorn person and you show them. They do a very good job using the local media to make that point. Meanwhile, the change that we hoped to get, which is a more efficient, autonomous system apparently did not develop because right here in 1996 we have Mr. Adams being basically driven out of business by a command and control system from Washington. So I guess that no change has occurred.

Mr. ROBB. May I respond to that, Mr. Inglis?

Mr. GEKAS. An additional 30 seconds.

Mr. ROBB. The reason that our group is opposed to block grants is because we think that the record of having administration at the State level or local level by non-LSC kind of groups has not been effective in the past. However, the LSC type of local control by boards of local lawyers that we presently have, I think that kind of local administration is working. But the record of the States and of the cities and the counties before we ever had the legal services program and even up to the present time to support legal services for the poor, civil legal services is very, very poor.

Mr. GEKAS. The time of the gentleman has expired.

Mr. INGLIS. Mr. Chairman, I think Mr. Adams wanted to make a remark.

Mr. ADAMS. I would just like to make a statement to Congress. You know, my disagreement is with the corporation and not that services should not be provided for the poor. My point is I just feel like it can be done a better way, and the money spent for LSC could be used for these people. Because we have had cases where we have helped abused and battered spouses who could not get out of situations, and I have seen that we have helped them. I feel like

the service is needed, but I feel like the State bar association has more experience providing these services for the poor, and I would recommend sending the appropriations directly to them.

Mr. GEKAS. We thank you, Mr. Adams. The gentleman from Rhode Island is recognized for 2 minutes.

Mr. REED. Thank you, Mr. Chairman.

There has been some discussion back and forth about the relationships between Legal Service Corporation grantees and other agencies doing legal service work. Mr. Robb, it strikes me there has been the insinuation all through the hearing that these are sort of shuffling things around and a shell game, et cetera.

But from your perspective, is that the case or that in fact—

Mr. ROBB. Not in my experience, sir. The impetus for creating some of these new corporations, and in our State it is called the New Mexico Center of Law and Poverty, came from a task force that was chaired by the Associate Justice Pamela Minzner of the New Mexico Supreme Court. It did not come from the so-called activists or liberals that I have heard so much about here. It came from a person—well, I would not call her a conservative, but she is an associate justice of the New Mexico Supreme Court. The impetus came from there to create this entity.

Yes, certainly, a lot of the legal services lawyers cheered us on, and some of them gave us suggestions. But to say that it is a shell game, as it is being done in New Mexico, and as I understand it is being done in the Santa Clara program, I think, is a gross mischaracterization.

Mr. REED. Thank you very much.

Listening to these discussions, it struck me that I note that the same logic is applied to contractors who have a union company. Then in the same building they have their nonunion associate company so that they can engage in Federal contracts under Davis-Bacon and then also engage in a whole range of other non-Federal work that does not require a union shop.

So I do not think, if we see that as perfectly fine commercial behavior, I cannot see why we are wondering why we cannot have these agencies operating.

Mr. ROBB. Mr. Reed, I loved your initial comments when you mentioned the fact that maybe all the lawyers who are volunteering their time to stand in the gap are also involved in this big conspiracy.

Mr. GEKAS. I have one other question in the remaining 2 minutes of this hearing, and that is in Ms. Searer's testimony. She made reference to the fact that the executive director was wearing Clinton-Gore shirts and would query the staff members on how they would be voting. Do you know whether or not the Legal Services Corporation headquarters in Washington ever learned of that situation?

Ms. SEARER. I believe when I called up the Office of Inspector General to report the outside practice of law, I threw that in.

Mr. GEKAS. Do you know whether or not the Legal Services Corporation in Washington ever issued any kind of reprimand or edict or corrective action with respect to that back to the local LSC?

Ms. SEARER. Not that I know of.

Mr. GEKAS. I would direct staff to make inquiry as to whether the Legal Services Corporation here in Washington ever heard of it, or ever took any action, or how they responded if they learned about it at all. I am very much interested in that.

Ms. SEARER. The person on the other end of the phone was not too interested in taking my complaint, the Office of Inspector General or the monitors that I spoke with.

Mr. GEKAS. Well, I would like to see what the record shows on that.

With that, I want to thank the witnesses from the second panel and to all those that participated in the hearing today this hearing is adjourned.

[Whereupon, at 1:45 p.m., the subcommittee adjourned.]

# APPENDIX

## MATERIAL SUBMITTED FOR THE HEARING

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July 11, 1996

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The Honorable George Gekas  
Chairman  
Subcommittee on Commercial and Administrative Law  
B-353 Rayburn HOB  
Washington, D.C. 20515

Dear Chairman Gekas:

Thank you for holding an oversight hearing on the Legal Services Corporation (LSC) on June 26th.

I would appreciate your consideration in placing a chapter of a book entitled *Harvest of Injustice: Legal Services v. The Farmer* in the record from the June 26th hearing. This chapter outlines the abuses of the LSC on small family-operated farms, in particular several apple orchards in my district. Mr. Terry Hepburn, owner of an orchard in Hancock, Maryland, was one of the business owners aggressively pursued by Maryland Legal Aid lawyers due to his participation in the H-2 temporary foreign worker program which is administered by the Department of Labor. As you know, the H-2 program permits farmers who are unable to recruit enough legal domestic labor to harvest their crops temporarily with workers from abroad. It is administered by the Department of Labor.

In the early 1980s, the lawyers at Maryland Legal Aid filed several class action lawsuits against Mr. Hepburn and other orchard owners in the area, basing their lawsuits on highly technical labor law regulations on behalf of the migrant workers. As a result of these lawsuits, Mr. Hepburn and the other orchard owners were hesitant to hire workers in the H-2 program, which eventually led to the complete shutdown of the six apple orchards and the loss of hundreds of jobs. Unfortunately, Mr. Hepburn's story is a prime example of the LSC hurting the very people its mission is to support by using taxpayer funds to destroy jobs and driving farmers out of business. I strongly believe that the LSC must be abolished and replaced with private efforts to represent the poor, such as charitable organizations and pro-bono legal services.

Again, thank you for your efforts to hold the LSC accountable for their actions. If you should have any questions regarding the enclosed documents, please feel to contact me or Susan Knight of my staff at 225-2721.

Sincerely,  
  
Roscoe G. Bartlett  
Member of Congress

Enclosures

Wednesday, June 21, 1995 THE MORNING HERALD

Hagerstown, Md.

Editorial Page Editor  
Bob Maginnis**A4**

## Editorials

# A lifeline or a menace?

For some residents of the Tri-State area, the Legal Services Corp. is the only thing that stands between them and poverty. They help the disabled win needed benefits and abused spouses find the protection they need.

But to some local orchardists who've faced the agency in court, it's hurt more workers than it's helped by pushing some growers to shut their operations. The agency's problem, now and in the past, is that it has concentrated on winning cases instead of working to get employers in compliance with the law.

After two Washington County orchards closed in the mid-1980s, citing six-figures settlements and attorney fees, then-Rep. Beverly Byron tried to persuade the agency to handle disputes administratively before it filed suits and complaints. By then, however, the animosities between growers and migrant workers' attorneys had soured to the point the Byron said both were stuck "in gridlock."

The story is the same in West Virginia's Eastern Panhandle, where five growers said suits filed on behalf of migrant workers have cost them \$100,000 apiece, and one Legal Services attorney says the growers "always lose in court."

They're not the only ones. When the government and business tangle in court, everyone pays — consumers who face higher prices or reduced supplies of local fruit when orchards go out of business, workers who lose their jobs and local government, which must deal with development that inevitably follows when the orchardist sells out to pay off the business' debts.

Instead of treating business as adversaries to be punished for their alleged sins, the U.S. needs this agency to mediate first, and litigate only as a last resort.

# HARVEST OF INJUSTICE

## Legal Services vs. The Farmer

By Rael Jean Isaac

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## CHAPTER ONE

## MARYLAND APPLE GROWERS AND THE H-2A PROGRAM: A CASE STUDY

" I never knew this kind of thing could happen here in America where a man could put a farmer out of business by harassing him to death."

J.S. Green, Somerset County, Maryland

On April 24, 1988 the Hagerstown, Maryland newspaper reported that the remains of the last major commercial orchard in Hancock had been auctioned off, marking the end of a hundred years of large-scale orchard farming in Western Maryland. What the newspaper did not report was that Legal Services was responsible for wiping out the small group of apple and peach growers who in 1982 produced 1.35 million bushels of apples, three-quarters of Maryland's harvest.

Despite the small number of growers affected, the story of Legal Services and the Washington County fruit growers bears telling because it throws in sharp relief all that is wrong with the program. The orchardists were inundated with what their attorney aptly described as a "sudden, savage, stunning onslaught" of lawsuits.<sup>1</sup> Legal Services' real target was the H-2 program upon which the orchardists relied to obtain workers to harvest their fruit. (It became known as the H-2A program after the Immigration Reform and Control Act of 1986 changed the paragraph in which the program was authorized.)

The H-2A program allows growers who cannot obtain sufficient domestic farm workers to petition the government for permission to bring in foreign workers on a temporary basis. Sixty days in advance, the grower must file a "job clearance order" with the Department of Labor specifying the number of workers required and the wages and conditions of work. The state employment service then tries to find domestic workers and if it is unable to find enough locally, enlists the employment services of other states. If sufficient workers can still not be found, the DOL certifies that the importation of temporary workers will not adversely affect U.S. workers. With this labor certification, the grower can apply to the INS for visas to import the workers he needs.

## IDEOLOGICAL BASIS FOR LEGAL SERVICES OPPOSITION TO H-2A

Legal Services attorneys have articulated some of the reasons why they oppose the H-2A program. A major one is that these workers are unlikely material for unionization, and unionizing agricultural workers is a major goal of the Legal Services "movement." In 1977, testifying before Congress against making the H-2 program easier for farmers to use, Burton Fretz of Legal Services' Migrant Legal Action Program said "It would be hazardous in terms of the depressing effect on any incipient collective bargaining activity that may be going on among domestic agricultural workers."<sup>2</sup> Since Legal Services attorneys are forbidden by Congress from engaging in unionizing activity, they are usually more indirect. Thus Bruce Goldstein of Farm Workers Legal Services in New York (now co-director of the Farm Worker Justice Fund) complained that "growers go out of their way to hire foreign workers, knowing they have much greater control over them than over American workers."<sup>3</sup> Robert Williams of Florida Rural Legal Services went even further, claiming "The H-2 program is incapable of reform. It's a form of indentured servitude."<sup>4</sup> (If so, it is a remarkably popular one, for workers clamor to participate, not surprising since they can expect to earn roughly fifteen times more each week than they do in their home country.)

A second reason Legal Services attorneys advance for their hostility to the H-2A program is that it hurts domestic workers. An article in the Legal Services journal *Clearinghouse Review* says: "In practice the H-2 program has resulted in widespread displacement of workers in the United States, depression of agricultural working conditions and abuse of both domestic and foreign workers."<sup>5</sup> In fact, the H-2A program exerts steady upward pressure on domestic wages. This is because Congress imposed special requirements on employers who participate in the program. They must provide transportation, housing, subsidized meals and other benefits to the H-2A workers, as well as pay a "prevailing wage rate" fixed by the Labor Department. Once the employer enters the program, he must provide the same benefits to all domestic workers, including any who apply through the first half of the season. Because all this is so expensive, employers tend to bid up wages in the hope of attracting sufficient domestic workers. This in turn pushes up the "prevailing wage rate" each year.

And while Legal Services attorneys assume that if there were no H-2A program, growers would have to raise wages to some hypothetical point where they would be attractive to domestic workers, in the real world farmers go out of business, switch crops, mechanize (where that is practicable), or resort to illegal immigrants.

But irrespective of the merit (or lack of merit) of the arguments of Legal Services attorneys, the H-2A program was established by Congress and is the law of the land. It is an egregious abuse of power for Legal Services attorneys to attack farmers with tax dollars bestowed upon them to uphold the law because they want to destroy the program.

## A BLIZZARD OF LAWSUITS AND ADMINISTRATIVE COMPLAINTS

The fate of Washington County's apple growers was sealed when Legal Services attorney Gregory Schell, an outspoken opponent of the H-2 program, moved from Florida to Maryland in 1983. Like many Legal Services attorneys, Schell made no secret of his opposition to the guest worker program, telling a reporter in Florida (to which he returned after eliminating the Maryland program) that "the use of H-2s in apples is even less defensible than their use in sugar."<sup>6</sup> (Florida's sugar cane growers were traditionally the chief users of H-2 workers.) Maryland Legal Services amassed a war chest as funds for Virginia's larger migrant Legal Services program were diverted and put at Schell's disposal.<sup>7</sup> The Washington County growers were chosen as targets presumably because, as the smallest component of East Coast growers using the H-2 program, they were the most vulnerable.

The H-2 (after 1986, H-2A) program is the most highly regulated of all agricultural programs, with the result that East Coast apple growers, as attorney Tom Wilson has pointed out, are among "the clean jeans of the farming business."<sup>8</sup> Yet precisely because the program is so highly regulated, it offers additional legal hooks with which Legal Services can grapple the farmer. In 1980, the Department of Labor set up an administrative complaint system within the U.S. Employment Service, giving Legal Services the option of going to court or filing "complaints" -- or both.<sup>9</sup>

In 1983 and 1984, Maryland Legal Aid filed 175 worker complaints in the job service system against the six members of the Washington County Growers Association.<sup>10</sup> (There had been a total of five complaints in the previous two years, all of them settled easily and promptly.) In addition, Maryland Legal Aid filed fifteen federal lawsuits against the growers. Terry Hepburn, whose Hepburn Farms was one of the two largest orchards, says: "I was in federal court five times in one year. That's ridiculous."<sup>11</sup>

From the standpoint of the growers, the administrative complaint system, intended to serve as a cheaper alternative to litigation, is in important respects worse than the courts. It is a five tiered system,

lacking the most elementary due process protections. The person filing the complaint is not required to be present at any stage of the procedure so the grower cannot confront and cross examine his accusers. There are no statutory or regulatory standards for conducting the investigation. As the complaint moves up through the various tiers on appeal, the new tiers rely on the flawed, unexamined "evidence" presented at earlier tiers which provides the sole record on review. Moreover, since only the worker can complain -- the farmer cannot file complaints against the worker or crew leader -- the absence of due process protections works solely against the farmer. To stack the deck even further, on appeal, worker complaints are evaluated by a "state monitor advocate" who, as the name suggests, is supposed to be an advocate, not an impartial arbiter. (According to the regulations the monitor advocate is supposed to advocate for the employer as well as the worker, but in practice the monitor advocate sees his role as advocate for the worker.)<sup>12</sup>

There are no financial penalties imposed by the administrative complaint system. The only sanction, which is imposed for any violation of the rules, is denial of access to the employment service system. But since the employment service system must approve the grower's application for H-2A workers, "decertification" is an extremely harsh penalty, often tantamount to a sentence of bankruptcy. It can readily be understood why Tom Wilson calls this a totally unforgiving and uncompromising system.<sup>13</sup>

Furthermore, since the job service complaint system does not require workers to exhaust administrative remedies before going to court, Legal Services can go to court on the same issues. As Hepburn puts it: "We were in double jeopardy. Legal Services would file a complaint and we went through a bureaucratic maze and then they'd file a federal lawsuit on the same complaint."<sup>14</sup>

## LEGAL SERVICES WAGES WAR ON THE RULES

Schell's administrative complaints and lawsuits attacked the established practices associated with every aspect of the H-2 program. He used both forums in his offensive against the ladder test, which growers used to ensure that workers were physically able to move and climb the 25 foot ladder used in apple harvesting. Schell charged that because domestic were more likely than Jamaican workers to fail, the test discriminated against them.

Terry Hepburn placed particular importance on the test. In 1978, one

of his workers lost control of a ladder, and in falling hit the tractor driver, who lost control, rolled down an embankment, and died. Nonetheless, a federal judge ruled that the test was not job-related, forcing Hepburn to pay \$42,000 in fines, including the salaries workers who failed the test would have made had they worked the entire season. Hepburn abandoned the ladder test for the 1986 season.<sup>15</sup> On August 11, as if to demonstrate just how job-related the ladder test in fact was, a worker fell from a 12 foot ladder at Hepburn's Orchard, sustaining severe head injuries.<sup>16</sup>

According to Department of Labor regulations, whether family housing -- rather than group housing for single workers -- must be provided, is determined by the "prevailing practice" in the area and the DOL had ruled that individual (not family) housing was the prevailing practice in western Maryland. But instead of petitioning the DOL to adopt its version of what the prevailing practice should be (which Legal Services could readily have done under the Administrative Procedures Act), Schell brought administrative complaints and lawsuits against the growers for failing to provide family housing. (It turned out that of the eleven workers on whose behalf the Maryland Legal Services program brought suit against two orchards, only one was married.)<sup>17</sup>

The DOL's 50% rule was yet another mine for administrative complaints and lawsuits. It was designed as additional insurance that the H-2 program would not take jobs away from domestic workers; under the rule, the growers had to hire -- and house -- any domestic workers who applied for jobs during the first half of the season. In theory, the growers were expected to terminate the employment of the "excess" H-2 workers.

Prior to 1983, the employment service had acted reasonably, not referring workers to employers whose housing was already full. But in 1983 and 1984, under the influence of Legal Services, the Maryland Employment Service referred workers without regard to the growers' need for workers or the availability of housing. On July 28, 1983, the first day H-2 workers were in the field, the employment service sent 68 domestic applicants to Fairview Orchards. And the DOL interpreted the 50% rule to mean that Fairview had to hire every one of them instantaneously, without adjustment for processing applicants or adjustment to the current work force.<sup>18</sup>

But the orchardists' plight was worse still. Unlike the H-2 workers, the domestic workers referred by the employment service could not be relied upon. In 1983, the orchardists of the Washington County Growers Association had 544 domestic workers referred to them, only eight of

whom completed the season.<sup>19</sup> Most, finding the work more physically demanding than they had anticipated, left after a few days. So if, to satisfy the DOL, the grower sent back the H-2 workers and housed the domestic workers, in a few days he could find himself without the workers he needed to harvest his crop. No wonder Terry Hepburn said the DOL looked on the orchards simply as a government entitlement program in the private sector.<sup>20</sup>

The grower was hemmed in any way he turned. George Gardenhour, who owned one of the smaller orchards, canceled his order for H-2 workers when eleven U.S. migrants applied to his orchard in September 1983. Because the facilities he usually rented for his workers had been vandalized, he hired them immediately, but explained he could not offer housing for a week. The workers quit before that time. Gardenhour was doubly victimized because he now had no work force and Schell sued the following year, charging him with "blatant discrimination" on the ground that if the workers had been Jamaicans he would have somehow found housing for them. Gardenhour had to pay the workers \$8,450 and lost much of his crop in the bargain.<sup>21</sup>

Firing workers for incompetence was all but impossible. Hepburn was sued for firing seven domestic workers. He had complained about their performance to the employment service which had sent representatives to the orchard who verified that the workers picked unripe peaches and damaged the trees. But when Legal Services brought suit, a federal judge ordered Hepburn to pay the workers what they would have earned had they worked the entire season plus court costs.<sup>22</sup>

Then there were the suits against the end of season bonus, which several of the growers offered as an inducement for workers to remain until the entire crop was in. Legal Services sued in federal court on behalf of workers who had not completed the season, arguing they should be entitled to a bonus because they had worked most of it.<sup>23</sup> Predictably, the end result was that growers abolished the bonus, reducing worker income.

Some suits bordered on the absurd. One small grower received a "demand letter" from Legal Services on behalf of a domestic worker who claimed the grower had refused to hire him. When the grower produced a canceled check (the worker had been hired and quit within a day and a half), Legal Services, nothing daunted, filed a 38 page complaint charging he had been underpaid! In the words of the complaint, he had suffered "serious financial injury." The injury consisted of an underpayment of \$5.80, which the grower had put in escrow in the event (which turned out

to be the case) that the prevailing wage would later be raised, and applied retroactively.<sup>24</sup>

#### UNETHICAL METHODS USED

Legal Services employed techniques ranging from the questionable to the downright unethical. One was to plant workers in order to generate litigation. Steven Karalekas, who represented the Washington County Growers Association, has pointed out that Legal Services attorneys would accompany one or more workers to the employment service office, specify the grower to which they should be sent, and lo and behold, those workers subsequently sued the targeted farmer.<sup>25</sup> Tom Wilson represented the growers in a suit to have one of Maryland Legal Aid's cases dismissed on the grounds that workers had signed under oath a document they could not read (the documents were in English and the workers spoke only Spanish) and in a few cases probably never even saw (only the signature pages had been sent through the mail).<sup>26</sup>

Contrary to Congressional intent, Maryland Legal Services used statutes to harass growers and inflict maximum financial injury upon them. Fairview Orchard's plight, when the employment office sent over 68 domestic workers on the first day the Jamaican H-2 workers were in the field, has already been mentioned. Fairview's tiny staff was overwhelmed and could not interview, administer the ladder test (not yet litigated away) and hire all the workers on the spot. In suing Fairview Orchards on behalf of those workers who were not immediately hired, Legal Services used RICO statutes (Racketeer-Influenced and Corrupt Organization Act), intended, as the very name makes clear, for use against organized crime. Because of the stigma associated with the word "racketeer," and the fact that the defendant can be sued for triple damages, these suits have become a first-class settlement weapon. In a 1984 opinion, the Second Circuit observed that "a current adage is said to be that 'Rico provides the only civil action where the defendant pleads not guilty.'" And indeed Fairview agreed to pay a substantial settlement.<sup>27</sup>

A rare light on Legal Services methods from within the organization comes from an affidavit signed by Beatrice Rivera, a paralegal who administered the Belle Haven office of the Virginia Legal Aid Bureau until the fall of 1984.<sup>28</sup> Rivera reports that once Schell came to Maryland and assumed control of Virginia's migrant funds, he also took over control of her office. It is reasonable to assume that the methods Schell used in Maryland did not differ substantially from those he employed in Virginia.

What were the methods Rivera enumerated?

1. File the maximum number of complaints possible. Rivera reports that Schell prepared an extremely detailed list of each and every housing requirement with which the growers were expected to comply. Rivera innocently gave a copy of the list to crew leaders and growers to use as a checklist to make sure their housing met the regulatory standards. Rivera reports that Schell chastised her for doing this "because he said I had given the growers a warning, thereby permitting them to avoid possible future suits against them." In another instance, a grower sent workmen to make repairs that, Rivera said, needed to be done. But when Rivera reported this progress to Schell, "he instructed me to file a complaint against the grower immediately -- before the repairs were finished."

2. Use worker weakness to obtain information against growers. According to Rivera, "I spoke to workers in 1984 who told me that a man accompanying Gregory Schell on his visits to the worker labor camps offered them alcohol and drugs in exchange for information against their grower employers."

3. Obtain complaints against growers through a form of bait and switch. Rivera reports that in her presence Schell boasted "that he induced workers into signing administrative complaint forms against the growers by leading the workers to believe that they were signing forms authorizing Mr. Schell to get them food stamps." Rivera cites the case of one crew leader named Grace Mason who was popular with workers. The workers cooperated with Schell until they learned he intended to file a complaint against her and refused to speak to him thereafter. "Unbeknownst to them," says Rivera, "they had already filed complaints against Ms. Mason."

4. Obtain worker signatures on complaints to be used against specific growers as Legal Services saw fit. Says Rivera, "I received a call from Mr. Schell in Salisbury, instructing me to get worker signatures on complaints and that he would fill in the name of the orchard at a later date....[M]any complaint forms were signed by workers and then had the employer filled in by the Legal Aid Bureau at a later date according to which orchards Mr. Schell had targeted to receive the most complaints."

5. Resort to devious means to "plant" future litigants in the camp of specific growers. Legal Services could not legally pay for a worker's transportation. But, says Rivera, "during the 1984 harvest season, Mr. Schell attempted to have the Migrant and Seasonal Farm Workers Association in Belle Haven provide a Haitian worker with no-cost transportation to Maryland. It is my recollection and belief that the

worker in question was to file some sort of complaint, as instructed by Mr. Schell, against his grower-employer upon his arrival in Maryland."

There is ample material for a "Harvest of Shame" here -- only this time, by Legal Services attorneys.

## NO REDRESS POSSIBLE

The experience of the orchardists in the Washington County Growers Association is significant not only because it reveals the range of weapons Legal Services wields when it decides to embark upon what it calls "an impact program," but because it shows the insuperable obstacles farmers face, even under unusually favorable conditions, when they attempt to obtain redress. Despite their small numbers, the Maryland orchardists fought back with exceptional determination, imagination and sophistication. They fought not only in the courts but also through the political process, taking their case both to legislators and to the boards overseeing Legal Services activities, local and national.

The growers enjoyed a number of advantages. The 300 member East Coast Growers Association, fearing the precedents being set in the Maryland cases, banded together to provide funds to aid in litigation expenses. The growers had excellent counsel, which not only ably defended against the onslaught of suits and complaints but took legal and political initiatives. And not least, these were the Reagan years, and the Reagan-appointed board of the Legal Services Corporation, and its staff, were sympathetic to the farmers plight, a highly unusual circumstance in either Republican or Democratic administrations.

The growers counterattacked in the courts, asking relief from the 50% rule, and the abusive administrative complaint system, all of which, the suit contended, had no basis in the statutes governing the H-2 program, but had been grafted upon the program by the Department of Labor. They lost the suit, appealed, and lost again.<sup>29</sup>

Even when the growers won in the courts at the local level, their legal victories turned out to be ephemeral. Legal Services appealed to more sympathetic federal appeals courts in urban centers where the judges were wholly unfamiliar with agricultural conditions. As a result of his experience with these suits, Tom Wilson says: "I would rather litigate against John D. Rockefeller than Legal Aid because he knows the value of the dollar and his resources are limited at some point."<sup>30</sup>

In February 1985, after paying nearly \$300,000 in penalties and settlements and over \$400,000 in legal fees,<sup>31</sup> the six Maryland growers

filed a formal letter of complaint with the board of Maryland Legal Aid and asked for an investigation of the "horribly excessive and grossly abusive" practices of the program's attorneys.<sup>32</sup> Each board member was sent copies of the letter and complaints filed against the growers, which mounted to a four foot stack. The xeroxing bill alone was \$6,000. After a month of silence, the head of Maryland Legal Aid responded with a single sentence, saying the board saw no reason to take any action.<sup>33</sup>

Unable to obtain so much as a hearing, the growers appealed to the board of the Legal Services Corporation. On January 31, 1986, the board heard representatives of both the growers and Legal Services. Finally the growers had a sympathetic audience. Board member Michael Wallace was incredulous as he was told of the one sentence reply from the board of Maryland Legal Aid: "They gave you no hearing, filed no answer, told you to go jump in a lake?"<sup>34</sup>

But Legal Services attorneys at the meeting were unabashed. Maryland Legal Aid's Stuart Cohen defended the one line rejection: "Mr. Karelekas told you that their complaint was answered." Cohen denounced the board for listening to the growers: they were conducting a "witch hunt."<sup>35</sup> Another Maryland Legal Aid attorney decried the "audacity" of the growers in having appealed to his administrative superiors.<sup>36</sup>

For all its sympathy, the LSC board found itself helpless to do anything. It sent a monitoring team to the Maryland Legal Aid Bureau in Salisbury, which showed its contempt for the Board (and the Legal Services Act, which gives the Board the responsibility to monitor programs) by locking the team out of the office. Justifiably outraged, the LSC board cut off Maryland Legal Aid's funds, but was forced to restore them a month later when Maryland Legal Aid went to court. LSC board member LeaAnne Bernstein lamented, "We are incapable of doing anything. It's sad and frustrating."<sup>37</sup>

In desperation, the growers appealed to their legislators. West Virginia Senator Jay Rockefeller said Legal Services could not be curbed in the West Virginia-Maryland panhandle for that would hurt the poor in other parts of those states.<sup>38</sup> Congresswoman Beverly Byron introduced legislation to change the Migrant and Seasonal Agricultural Worker Protection Act so as to limit litigation, but the bill went nowhere.

## THE GROWERS GO DOWN

The growers went down like nine-pins. Fairview, the largest orchard, producing 25% of Maryland's apple crop, was the first, shutting down late

in 1986. The orchard was owned by West Germans who had invested \$10 million in it over the previous seven years. George Gardenhour committed suicide. In 1987, Glaize Orchards, which also had orchards in Virginia, went out of business in Maryland. Philip Glaize declared that Maryland Legal Aid had made it uneconomic to grow apples in the state.<sup>39</sup>

Hepburn Farms fell to the ladder test. Shortly before the 1986 harvest, Hepburn was debarred from the employment service system on the grounds that his use of the ladder test discriminated against domestic workers. Not content with its success in decertifying him, Legal Services filed suit yet again when Hepburn turned to New Jersey's Glassboro Service Association in a last ditch effort to obtain Puerto Rican workers. For once, Legal Services lost its suit. Since none of the workers it represented worked for Hepburn, the court ruled it had no standing to sue.<sup>40</sup> But it was a Pyrrhic victory. Obtaining only half the workers he needed, Hepburn lost \$250,000 in apples he could not pick.

Fearing he would be debarred from the H-2 program again in 1987 (it was now the H-2A program), Hepburn threw in the towel. State officials had tried to help, speaking confidently of training unemployed people to become fruit pickers, but could find no volunteers. The governor came up with the idea of using prison workers, but this was rejected out of hand by state correction officials. "We're seeking more meaningful employment for them," said Beverly Marable, in charge of inmate job training.<sup>41</sup>

#### THE PRICE OF SURVIVAL -- NO MORE H-2A WORKERS

A few of the smallest orchardists survived, but not without giving Legal Services its victory by abandoning the H-2A program. There were two "last straws." One came in 1987 when DOL Region Director William Haltigan informed the growers that in order to participate in the H-2A program, they would have to agree to visit personally a number of worker advocacy organizations from New York to Florida to interview any U.S. worker they might come up with. Even some DOL officials were appalled. One told a reporter: "If you've got 500 acres of peaches and apples to tend to, sir, do you have time to go all over the East Coast? It's unreasonable. It's unbelievable."<sup>42</sup>

Ironically, Haltigan based this coup de grace to the Maryland program upon language regarding the H-2A program in the new Immigration Reform and Control Act of 1986 (IRCA), although Congress, thinking it was cracking down on the illegals on whom many farmers depended, clearly intended to make the program more user-friendly. Speaking on the Senate

floor, Senator Alan Simpson, chairman of the Senate Immigration subcommittee and floor manager for IRCA, said: "We have done some remarkable things with the H-2 program in this bill. We streamlined it. We made it workable...H-2 has worked where people chose to use it. But it has been so burdensome, so tedious, so restrictive. The Department of Labor seems to get some perverse enjoyment out of cutting the employers or cutting the agricultural growers out of the game. We think we have solved that with the H-2A program in this bill."<sup>43</sup>

But Congressional intent was irrelevant to the DOL officials administering the program. IRCA specified that employers must engage in "positive recruitment" of domestic workers and Haltigan seized upon this term as a means to cut Maryland growers out of the game completely. In effect, Haltigan's response to the destruction of the DOL's own placement system as a result of Legal Services litigation a decade earlier was to force the growers to be their own recruiters.

The second "last straw" for the growers was that, thanks to one of Legal Services many lawsuits, they did not know how much they would have to pay workers brought in under the H-2A program. West Virginia Legal Services had brought suit to change the way piece-rates were calculated for workers in the (then) H-2 program, but although it was the growers whose future was on the line, it sued only the Department of Labor. And rather than suing in West Virginia, Legal Services chose its favorite venue, the D.C. District Court, appearing before its favorite judge, Charles Richey.<sup>44</sup> Not surprisingly, Legal Services prevailed, and a year later returned to the D.C. court to broaden the ruling to affect every grower in the H-2 program, including, of course, the Maryland growers. As Tom Wilson said, "The piece rate wages of every grower using the H-2 program were dramatically escalated (in some instances, by 40 percent in a single year) pursuant to a judicial determination engineered by LSC-grantee lawyers without a single grower ever appearing in the courtroom where the controlling decisions were made."<sup>45</sup>

The H-2A program was already costly to growers, who paid approximately 50% more than the going compensation for domestic workers outside the program -- if they could obtain them. The growers were willing to pay the premium to obtain certainty, the assurance that their crop would be harvested. But now, for Maryland growers, the program had become a nightmare of uncertainty, for between Legal Services, DOL and the courts, they did not know if they would obtain workers or, with the continuing legal turmoil around the new piece rates, what they would be ordered to pay them at season's end, and if they could

afford the new rates at all.<sup>46</sup>

The remaining Maryland growers pulled out of the H-2A program. Since they were small and their labor needs not large, they have managed to limp along by using (mostly legal) Mexican workers. Apple production has plummeted, to a fourth of what it was before Legal Services embarked on its anti-grower campaign.<sup>47</sup>

## A QUESTION OF PROFESSIONAL ETHICS

Thus far, the focus has been on what Legal Services did to the growers. But what about the workers? Gregory Schell declared: "Frankly, my clients don't give a damn if Terry Hepburn goes out of business."<sup>48</sup> In fact, his clients had a direct stake in Hepburn's survival, for Hepburn and the others whom Legal Services put out of business provided their jobs.

Moreover, although Legal Services claimed to have the interests of U.S. workers at heart, it eliminated large numbers of domestic jobs. Hepburn says: "You have people who've been working here for 50 years. Tractor drivers, sprayers, packers, suppliers, hundreds of local people. A \$2.5 million payroll was taken out of the community."<sup>49</sup>

Fundamental questions of professional ethics are raised by Legal Services representation of the H-2 program's Jamaican workers. Libby Whitley says: "If taking as a client a person you want to put out of work is not a conflict of interest, I don't know what is. You are taking on a client with the express purpose of doing him out of a job without his knowing about it."<sup>50</sup>

Because their numbers were so small, the fate of the Washington County Fruit and Growers Association was barely noted beyond the county's boundaries. Unscathed, Legal Services moved on to bigger and better targets. But for vegetable and fruit growers who paid attention, Gregory Schell had left a message: use the H-2A program and you will be bankrupted by lawsuits.

## Chapter One MARYLAND APPLE GROWERS AND THE H-2A PROGRAM

1. Letter to John Love, Chairman, Board of Directors, Maryland Legal Aid Bureau from S. Steven Karalekas, February 7, 1985.
2. Quoted in Temporary Worker Programs: Background and Issues, A Report Prepared for the Committee on the Judiciary, U.S. Senate, by the Congressional Research Service, U.S. Government Printing Office, February 1980, p. 74.
3. 1991 States News Service, March 13, 1991. One of a series of quotations under the title "Friends of the Workers?" submitted by Libby Whitley in testimony before the Subcommittee on Commercial and Administrative Law and Governmental Relations of the House Judiciary Committee, September 22, 1993, Government Printing Office, 1994, pp. 213-15.
4. The Herald (Provo, Utah), May 5, 1983. See also Rael Jean Isaac, "Legal Services and the Farmer," American Spectator, November 1986, p. 23.
5. Migrant Legal Action Program, "Migrants," Clearinghouse Review, January 1981, p. 979.
6. News and Sun Sentinel (Fort Lauderdale, Florida), December 2, 1986, submitted by Libby Whitley as "Friends of the Workers?" op. cit.
7. Affidavit by Beatrice Rivera, dated April 7, 1990. Submitted in testimony by Libby Whitley, op. cit.
8. Telephone interview, Tom Wilson, June 3, 1986.
9. Department of Labor Employment and Training Administration: Services to Migrant and Seasonal Farm workers; Job Service Complaint System; Monitoring and Enforcement, Federal Register, 20-29 CFR, Vol 45, No. 113, June 10, 1980.
10. Washington County Fruit Growers v. Donovan & Douglass. In U.S. District Court for Maryland, Civil Action # B85-910, February 28, 1983, pp. 41-42.
11. Telephone interview, Terry Hepburn, September 12, 1995.
12. The problems with the administrative complaint system are analyzed in detail in Washington County Fruit Growers v. Donovan & Douglass, op. cit., passim.
13. Telephone interview, Tom Wilson, June 3, 1986.
14. Telephone interview, Terry Hepburn, September 12, 1995.
15. Morning Herald (Hagerstown, Maryland), September 8, 1987. This was one of a series of articles by reporter Arnold Platou highlighting the plight of the Maryland growers. In a telephone interview with this writer (September 12, 1995), Hepburn pointed out that the ladder test actually

had its origin with the Department of Labor in the late 1970s. The state employment service decided to recruit Puerto Rican workers (who are considered domestic workers) and paid \$165,000 to bring up a large number, putting them up in a local hotel. The growers immediately recognized that they were not a suitable agricultural work force and the "ladder test" was developed on the spot, with Department of Labor cooperation, and administered in the hotel parking lot. Hepburn says half the workers refused to get on the ladder and the rest quit within five days of starting work. John Hancock, long-time head of the agricultural labor certification unit within the Employment and Training Administration of the DOL, referred to this fiasco in his testimony before the Subcommittee on Risk Management of the Senate Agriculture Committee on December 14, 1995: "There are some of us left who remember the fiasco associated with the 1978 East Coast apple harvest and the headlines DOL's failure got from some major newspapers."

16. Letter from Tom Wilson to Rael Jean Isaac, August 19, 1986.

17. Letter to John Love, Maryland Legal Aid Bureau, from Steven Karalekas, *op. cit.*

18. *Washington County Fruit Growers v. Donovan & Douglass*, *op. cit.*, pp. 24-30. In the perception of growers, the 50% rule acted as a disincentive to the state employment service to recruit workers before the date the employer needed them. Once they had an H-2A work force, they would be flooded with workers. On the other hand, John Hancock (see footnote 15) points out: "It is not a simple matter to find workers, many of whom are migrants, who will make a commitment to accept a job that far off [up to 60 days] and who will then follow through on that commitment. Most farm workers actively looking for jobs either don't want to wait that long or can't afford to. They may agree to accept a job that won't start for 30 days, but in reality will almost certainly take something else if it comes along in the meantime. The history of the H-2A program is replete with instances of U.S. workers being identified as available at the time of certification, but then not appearing on the date of need." (Testimony, Hearings, House Judiciary Committee, Risk Management and Specialty Crop Subcommittee, December 14, 1995)

19. *Washington County Fruit Growers v. Donovan & Douglass*, *op. cit.*, p. 14.

20. Telephone interview, Terry Hepburn, September 12, 1995.

21. *Morning Herald*, September 9, 1987.

22. *Ibid.*, June 17, 1987.

23. Telephone interview, Tom Wilson, June 3, 1986.

24. U.S. District Court for District of Maryland, Civil Action No. JH-84-

1060.

25. Testimony of Steven Karalekas, Legal Services Corporation Board Meeting Proceedings, January 31, 1986, pp. 109-10, p. 163.

26. Rael Jean Isaac, "Legal Services and the Farmer," *American Spectator*, November 1986, p. 23.

27. An account of Fairview's predicament was provided by Tom Wilson in a letter to Rael Jean Isaac, August 19, 1986; also in Letter from Steven Karalekas to John Love, Maryland Legal Aid Bureau, op. cit. The Rico quote is in *Sedimar v. Imrex Co., Inc.* 741 F. 2d 482, 487.

28. The following section on Schell's methods is based on the affidavit by Beatrice Rivera, op. cit.

29. Civil Action B85-910.

30. Telephone interview, Tom Wilson, June 3, 1986.

31. *Morning Herald*, September 9, 1987. The Farm Labor Executive Committee (FLEC), an East Coast organization of over 300 growers, paid the lawyers bills to fight the Maryland cases in 1984 and 1985. However, the growers had substantial costs prior to FLEC's involvement and of course, after early 1986, when FLEC withdrew.

32. Letter to John Love, Maryland Legal Aid Bureau, from Steven Karalekas, op. cit.

33. Testimony of Steven Karalekas, LSC Board of Directors meeting, Proceedings, op. cit., pp. 122-23.

34. *Ibid.*, p. 123.

35. *Ibid.*, pp. 227, 228-29.

36. *Ibid.*, p. 189.

37. Telephone interview, LeaAnne Bernstein, June 30, 1986.

38. *Morning Herald*, September 23, 1987. Grower Philip Glaize addressed a meeting of 20 area legislators asking them to back a resolution calling for legislation to stop "frivolous suits" by Legal Services against the orchardists. However, it was decisively defeated, only three of the legislators voting in favor. *Ibid.*, July 31, 1987.

39. *Morning Herald*, September 6, 1987.

40. The suit was *Comite de Apoyo a los Trabajadores v. U.S. Department of Labor et al*, U.S. District Court for District of Maryland, Civil # Y-86-2324. The "et al" were Hepburn and Fairview Orchards. The judge granted summary judgment, dismissing the case against all three.

41. *Morning Herald*, September 10, 1987. Marable said job training for inmates should be "something that people will be able to do once they get out of the institution," apparently not seeing agricultural labor in that light.

42. Ibid., August 12, 1987.
43. Senator Alan Simpson, Chairman of Senate Immigration Subcommittee, and floor manager for IRCA referring to the conference report, Congressional Record, October 17, 1986, S-16888.
44. Testimony of Thomas Wilson, Hearings, Subcommittee on Administrative Law and Government Relations of Committee on Judiciary, House of Representatives, May 23, 1990, p. 254.
45. Ibid.
46. The letter, dated July 20, 1987, sent by the DOL's Region Director, William Haltigan to Maryland growers in the H-2A program told them that certification of workers under the program was contingent on the growers agreeing to pay all workers "retroactive to the beginning of the season the difference between the wages paid and any wages ultimately required by a new piece rate and/or AEWR [Adverse Effect Wage Rate] regulations." In other words, the growers were told they had to make an open-ended commitment to unknown wage scales.
47. "Fruit Industry, Smithsburg, Washington County, Maryland," Smithsburg Historical Society, 1995, p. 12.
48. Morning Herald, September 8, 1987.
49. Telephone interview, Terry Hepburn, September 12, 1995.
50. Telephone interview, Libby Whitley, September 14, 1995.

### About the Author

A political sociologist, Dr. Isaac has written on public policy issues in National Review, The Wall Street Journal, American Spectator, Reader's Digest, Commentary, Midstream, Barron's, among others. She is the author (with Erich Isaac) of *The Coercive Utopians* and (with Virginia Armat) of *Madness in the Streets: How Psychiatry and the Law Abandoned the Mentally Ill*. Among her previous articles on Legal Services are "Legal Services and the Farmer" (American Spectator, November 1986), "Bringing Down the System through 'Training'" (The Robber Barons of the Poor? Washington Legal Foundation, 1985) and "War on the Poor" (National Review, May 15, 1995).

### About The National Legal and Policy Center

The National Legal and Policy Center promotes ethics in government through distribution of the "Code of Ethics for Government Service," and through research, education and legal action.

NLPC was one of three groups which successfully litigated for public disclosure of the participants and document files associated with Hillary Clinton's Health Care Task Force.

Through its Legal Services Accountability Project, NLPC has become the leading group exposing abuses within the federal legal services program. NLPC's Chairman, Ken Boehm, previously served as Counsel to the Board of the Legal Services Corporation. He has debated LSC Chairman Doug Eakeley and LSC President Alex Forger on national radio programs, testified about legal services before committees of the U.S. House and Senate, and has overseen a research project identifying hundreds of political and other abuses by legal services programs.

NLPC President, Peter Flaherty, is the former cochairman of the Legal Services Reform Coalition. As a leading critic of the legal services program, he has testified before Congress and written articles appearing in The Heritage Foundation's Policy Review, The Washington Post, and other publications.

**STATEMENT OF THE  
FARM BUSINESS COUNCIL**

**TO THE  
ADMINISTRATIVE AND COMMERCIAL LAW SUBCOMMITTEE  
COMMITTEE ON THE JUDICIARY  
U.S. HOUSE OF REPRESENTATIVES**

**PERTAINING TO THE HEARING OF JUNE 26, 1996  
REGARDING THE FEDERAL LEGAL SERVICES PROGRAM**

The Farm Business Council appreciates the opportunity to comment for the record regarding the activities of the present federally-funded Legal Services Program. The Farm Business Council is a non-profit organization established for the purpose of representing its membership on a public policy issues. It especially seeks an end to federal subsidies for the present legal services programs and the Legal Services Corporation.

The Subcommittee has been provided with statements from legal services programs, providers and clients that "problems with past legal services programs and activities" have been "fixed" by restrictions placed on programs by the FY96 LSC appropriations bill, and by LSC regulations in conformity thereof. This is simply not true, and mirrors similar claims made by LSC-funded programs nearly fifteen years ago after a similar round of deep spending cuts in the FY82-83 years. We strongly urge that Congress be aware of the duplicity of such claims, and take strong steps to ensure that the problems associated with these programs not be permitted to continue.

The Farm Business Council, which represents individual growers and agricultural associations whose memberships have been sued by federally-funded legal services migrant attorneys for years, believes that Congress has a rare opportunity this year to eliminate this controversial and counter-productive program. We beg that this opportunity not be wasted.

The Subcommittee's hearing focused on program compliance with new restrictions. In telephone surveys of key agricultural regions, organizations and attorneys who have represented farmers over the years, the Farm Business Council has found the following:

Due to an anticipated FY96 reduction in funding, some programs have reduced their overall activities and are not filing as many cases against farmers as they have in past years. While the amount of litigation may have been substantially reduced, it has not stopped. Additionally, pro bono representation has increased substantially in migrant cases, and bar association funds and grants have in some areas offset federal reductions.

Some migrant programs (Florida) have structured "interrelated organizations", or mirror corporations, and are conducting activities under the auspices of both organizations

simultaneously. In this regard, former LSC attorneys, or those 'wearing two hats' have in some instances engaged to represent clients otherwise illegal under the LSC statute.

Ongoing class action litigation, administrative rulemaking and other types of cases against farmers are progressing.

## **L. Ohio Litigation**

An excellent example of the continuing LSC campaign against farmers is the unrelenting litigation against Ohio pickling cucumber and vegetable growers. Representatives of this industry testified about the extend of the LSC-funded campaign before the Senate Labor Committee in 1995 [testimony of Judy Mauch, Lindsey, Ohio, June 23, 1995] regarding activities of the LSC migrant grantee, Advocates for Basic Legal Equality (ABLE).

In that testimony, Ms. Mauch noted:

"the pickle industry grew rapidly in Ohio until approximately ten years ago, when it went into rapid decline. The major reason for this decline is an agency called Advocates for Basic Legal Equality (ABLE)...ABLE has sued countless growers in our area for alleged violations of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) and other statutes...I am personally aware of over twenty growers in our area who have quit growing vegetables because of ABLE, costing a great number of migrant workers their jobs."

Interestingly, most of the pickling cucumber growers in this northwest Ohio area are party to a collective bargaining agreement with a farmworkers' union, the Farm Labor Organizing Committee (FLOC). The agreement contains an extensive workers' grievance procedure which is disregarded by ABLE in filing lawsuits against the Ohio growers.

ABLE's litigation has so fractured the agricultural worker and grower community that FLOC has intervened in various cases on behalf of the Ohio pickle growers. The Ohio State University Extension Services has also developed a mediation and grievance procedure to attempt to resolve the litigation situation.

ABLE's activities continued in late 1994, 1995 and 1996. On July 25, 1995 ABLE filed *Gutierrez, et.al., v. Ackerman* in US District Court for Northern Ohio. The issues in this case are substantially identical to the earlier Ohio growers' cases.

In 1995, ABLE also engaged in questionably ethical activities in other, ongoing cases, such as recruiting clients in *Villereal, et. al, v. Wiers Farm, Inc.* (N.D. Ohio, Carr, 1994). In affidavits filed with the court in 1995, Wiers farmworkers attest that they were offered money to sign on as plaintiffs in a "prepared lawsuit." This type of activity is not uncommon in LSC-funded migrant cases.

ABLE also has proceeded against pickle grading stations operators in *Chavez v. Vlastic Foods, Inc. and Roseboom's Grading Station, Inc.* (N.D. Ohio, Carr, 1994). Threats of litigation for failure to rehire are pending against growers Harley and Nearline Shaull although no lawsuit have been filed as yet.

## II. Florida Litigation

Growers' continuing experience with Florida Rural Legal Services illustrates its disregard for congressional or regulatory restrictions on LSC-funded activities.

On October 5, 1995, the Florida Rural Legal Services filed *Cruz et.al. v. Bonita Tomato Growers, Inc.* (20th Circuit Court, FL and US District Court/M.D. FL) seeking damages, fees and costs against the tomato growers on behalf of workers injured in a transportation accident. This case is particularly egregious in that it was brought against the Bonita growers in the window afforded by a US Supreme Court decision in *Barrett v. Adams Fruit Co., Inc.* (1991). In that case, brought initially by FRLS, the US Supreme Court eventually upheld the circuit court's interpretation that workers' comp was not the exclusive remedy for injuries sustained in employment covered by the federal agricultural labor statute, the Migrant and Seasonal Agricultural Worker Protection Act (MSPA).

Except for the *Adams Fruit* decision, the claims in the Cruz case would ordinarily be solely the purview of the state workers' compensation system. The Adams Fruit decision was recently overturned (1995) through passage of PL 104-49, which amended MSPA. Farmworker advocates, including Florida attorneys in partnership with the attorney of record in the Cruz case (Sarah Cleveland) lobbied against passage of PL 104-49 during the five years preceding its passage.

While the Cruz case has been rendered moot by the Adams Fruit legislation, it has yet to be dropped by FRLS. Given that the attorneys know from the beginning that the case would be rendered moot, particularly by way of their deep involvement in legislative and regulatory negotiations surrounding the reversal of the Court's decision, it should never have been brought in the first place. The suit was brought solely for harassment purposes, and is totally without merit.

Contemporaneous (April 1996) with attorney Sarah Cleveland's representation of the Cruz plaintiffs as staff attorney for the Florida Rural Legal Services, an LSC grantee, she was also listed as attorney of record for Florida Legal Services, Inc., presumably a privately-funded bar association organization in *Quincy Farms, Inc., v. United Farm Workers of America, AFL-CIO, et.al.* In that case, the Florida Legal Services, Inc. represents the UFW in their attempt to organize the Quincy, Florida, mushroom farming operation.

On March 14, 1996, the UFW attempted to strike the Quincy Farms operation. 84 mushroom harvesters scheduled a work stoppage and blocked traffic entering the Quincy premises. Their activities caused a traffic accident involving a serious injury. Quincy Farms sought, successfully, a court injunction removing the strikers from the roadway.

The Florida Legal Services filed a counterclaim on behalf of the UFW appealing the injunction, fees, costs and damages. The UFW has now begun a seven-state boycott of Quincy Farms.

The United Farm Workers is an ineligible client under the LSC statute. The Farm Business Council is curious, how, exactly, attorneys are engaging to represent clients simultaneously through both a taxpayer-funded LSC grantee, the Florida Rural Legal Services, and a putative private entity, the Florida Legal Services Inc.

In *Cleveland, et.al., v. Butterworth and Wilken* (S.D. FL, Snow, December 1995), two Florida Rural Legal Services attorneys sued the Florida Attorney General Robert Butterworth and the Palm Beach County Clerk of Court Dorothy Wilken to overturn Florida's cost bond posting requirements. Together with the ACLU and seven other named (presumably indigent) plaintiffs, FRLS attorneys Greg Schell and Sarah Cleveland are challenging Florida's state statute (Sec.57.011) which requires that all non-Florida residents post a \$100 cost bond with the court at defendant's request.

For years, the agricultural community has pointed out that LSC grantees engage in a wide range of administrative rulemaking cases. We feel that such litigation is especially indefensible. It may be a great deal more fun for social activist litigators (taxpayer-funded) to try to reinterpret, change or overturn laws and regulations in order to shape the world according to their own views than it is to represent individual poor clients with their everyday problems. However, this is not Congress' intent, nor do these cases solve individual poor clients' special problems. We believe such cases are inappropriate. Despite LSC representations that administrative rulemaking cases are rare, it is our experience that these suits are a favored tactic and are usually pursued aggressively by the LSC-funded attorneys.

In this case, the federal district court abstained from deciding the constitutionality of the cost bond statute until the state court had a chance to examine the validity of the statute. Plaintiffs appealed that abstention to the 11th Circuit Court of Appeals. The 11th Circuit denied the plaintiffs' request for an injunction during the pendency of the appeal, but has not yet decided on the merits.

Like the Quincy mushroom case, in the Cleveland case the LSC attorneys have continued to wear two hats -- briefs have been filed as recently as April 11, 1996 as the Florida Rural Legal Services as well as Florida Legal Services, Inc.

### III. Texas Litigation

Attorneys for the Texas Rural Legal Aid (TRLA) continue to actively litigate against growers. In 1995 TRLA filed *Chavarria v. Curtice-Burns, Inc.* (W.D. Texas, April 1995). In that case, TRLA sued Curtice-Burns, Inc., a large New York fruit and vegetable processing company and its southern subsidiary, Southern Frozen Foods, on behalf of 54 plaintiffs, alleging that they were 'disguised' employees of Curtice-Burns by way of their real 6

employment with a New Mexico farmer who had a contract with C-B to grow squash. Although Curtice-Burns settled this case in late 1995 to avoid the expense of a lengthy trial on the merits (in which it would probably have prevailed, since most of the factors supporting the independence of the employment relationship were Curtice-Burns' favor), within the past two months an additional 97 plaintiffs have surfaced on whose behalf TRLA is now claiming damages.

#### IV. Ongoing Litigation

Cases, including major class actions are proceeding against growers in all jurisdictions. A sampling of these cases follows, as excerpted from the LSC's own 1995 Clearinghouse Review: *Roman v. Korson* (W.D. Mich, 1994), *Sanchez v. Overmyer* (N.D. Ohio, 1994), *Murillo v. Texas A&M University* (S.D. Tex. 1994) and *Flores v. Rios* (N.D. Ohio, 1991).

Other continuing activities include: litigation against Florida sugar companies which formerly used the H-2A program (the federal temporary foreign agricultural worker program), administrative complaints against North Carolina H-2A program users, a complaint filed against a Maine H-2A growers relating to claims from the 1995 season, and involvement of east coast LSC-funded programs in New England, Virginia and North Carolina H-2A programs in referrals of Puerto Rican farmworkers. 1983 and 1985 administrative rulemaking litigation relating the H-2 wage rate cases are still ongoing (West Virginia Rural Legal Services.)



# **LEGAL SERVICES CORPORATION**

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Alexander D. Forger  
President

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July 12, 1996

Hon. George W. Gekas, Chairman  
Subcommittee on Commercial and  
Administrative Law  
Committee on the Judiciary  
U.S. House of Representatives  
B-353 Rayburn House Office Bldg  
Washington, D.C. 20515

Dear Mr. Chairman:

At the Subcommittee's hearing on June 26, several witnesses made specific statements about the Legal Services Corporation (LSC) which call for response by the Corporation. As no representative of LSC had been invited to give testimony, there was no opportunity for the members of the Subcommittee to hear a more balanced presentation or to challenge a number of the questionable statements that were made. Hence, we submit this writing for the record.

1. In his testimony, Senator Craig makes reference to a letter from the Legal Services Corporation in August 1993 indicating that the Oglala Sioux Tribe appeared to be ineligible for representation by Idaho Legal Aid Services. He suggested that the Corporation failed to enforce that determination. I am attaching a letter dated December 17, 1993, from LSC President John P. O'Hara to the Executive Director of Idaho Legal Aid Services concluding that, based on new information received by the Corporation, the Tribe did in fact meet the eligibility requirements for group representation set forth in the Corporation's regulations. Mr. O'Hara was appointed by the Board of Directors composed of members appointed by President Bush.

Under the delivery system established by the Legal Services Corporation Act, decisions about whether or not to accept particular cases are left to the grantee, so long as the representation is not prohibited by the Act or other legislation. Having determined that the representation of the Tribe was legally permissible, the Corporation had no basis for sanctioning the program for accepting the case or for requiring it to end its representation. The program's actions were consistent with

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George W. Gekas, Chairman  
 Subcommittee on Commercial and  
 Administrative Law  
 Committee on the Judiciary  
 July 12, 1996  
 -Page Two-

congressional intent to provide legal assistance to eligible Tribes that seek to enforce their legal rights, including those rights pursuant to the Indian Child Welfare Protection Act.

2. Kenneth Boehm's testimony cites an article in the *Washington Post* which quotes Congressman Charles Taylor as stating that the Corporation had been unable to provide him with a single example of a case in which a grantee helped to rid a public housing project of a drug dealer. I am attaching a copy of a letter to the editor I wrote in response to that article. As the letter indicates, we are unaware that Representative Taylor ever made such a request. Had we received it, we could have provided him with numerous examples of such cases, including examples in his own state of North Carolina.

3. Mr. Boehm's testimony also quotes from an article in *California Lawyer* in which an LSC staff member is quoted concerning the creation of a new entity to receive LSC funds in Santa Clara County, California. I am attaching a letter to the editor published in the May 1996 issue of *California Lawyer* which provides clarification for that statement. As noted in the letter, the standards which LSC applies in assessing such situations were first developed by the U.S. General Accounting Office. They were incorporated into LSC's Audit Guide by the Board of Directors appointed by President Reagan.

4. In his testimony, Professor Charles E. Rounds takes issue with some of the activities of Greater Boston Legal Services (GBLS) and the Massachusetts Legal Assistance Corporation (MLAC). As Mr. Rounds notes, GBLS withdrew its application for LSC funds for 1996, and, thus is not an LSC grantee. Contrary to Mr. Round's assertion, MLAC has never been an LSC grantee. Such misstatements create a recurring problem for LSC. These stories take on a life of their own, leading to the growing body of mythology about the activities of the Corporation.

5. Finally, I take note of your warning that there should be no retaliation against any person or entity that presented testimony critical of the Corporation. Let me assure you that LSC would never consider retaliating against a grantee or an individual for testifying before the Subcommittee or otherwise expressing a particular point of view about whether or how legal services should be made available to the poor. Indeed, such an action would never have occurred to me. Unfortunately, we have had ample opportunity to prove this point.

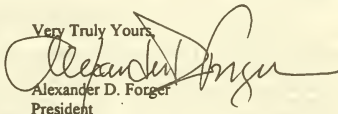
In particular, I take strong exception to any imputation that the Corporation has retaliated or would retaliate in response to the testimony of Robert Adams, Executive Director of Legal Services of the Fourth Judicial District in South Carolina. As you know, Mr. Adams testified before the Subcommittee in July 1995, that he did not see a need for the Legal Services Corporation, yet LSC

George W. Gekas, Chairman  
Subcommittee on Commercial and  
Administrative Law  
Committee on the Judiciary  
July 12, 1996  
-Page Three-

nevertheless selected the program as the recipient of a grant for fiscal year 1996. This program's service area is one in which LSC received competing proposals to provide service for fiscal year 1996. LSC scheduled on-site capability assessments of both applicants as part of its review of their proposals. Two days before the scheduled visits, Mr. Adams' program's competitor cancelled its appointments with the LSC reviewers. LSC proceeded with its scheduled visit to the service area, and subsequently selected Mr. Adams' program as the recipient of a grant, subject to certain grant conditions to address problems identified during the competition process. Neither the on-site capability assessment nor the grant conditions were in any way related to Mr. Adams' testimony before the Subcommittee in July 1995.

I request that this letter and the attached documents be made part of the record of the hearing.

Very Truly Yours,

A handwritten signature in dark ink, appearing to read "Alexander D. Forger", is written over the typed name and title. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Alexander D. Forger  
President

cc: Hon. Jack Reed, Ranking Minority Member



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December 17, 1993

### FAX

Ernesto G. Sanchez, Executive Director  
Idaho Legal Aid Services, Inc.  
P.O. Box 913  
Boise, Idaho 83701

Dear Mr. Sanchez:

This letter is in response to your October 28, 1993 letter. In that letter you requested that Emilia DiSanto reconsider her August 4, 1993, finding that the Legal Services Corporation ("LSC" or "Corporation") lacked sufficient information to determine that the Oglala Sioux Tribe ("Tribe") was an eligible client pursuant to 45 C.F.R. Part 1611. By this letter, the Corporation also acknowledges receipt of your facsimile of the November 22, 1993, letter from the Tribe to Idaho Legal Aid Services, Inc. ("ILAS"). In that letter, the Tribe sets out an explanation of why the grants for the two tribal attorneys preclude the use of such grant funds for the Indian Child Welfare Act ("ICWA") case you have undertaken on behalf of the Tribe.

As you know, at issue is whether the Tribe "lacks, and has no practical means of obtaining, funds to retain private counsel." 45 C.F.R. §1611.5(c).<sup>1</sup> The November 22, 1993 letter from the Tribe

<sup>1</sup> Section 1611.5(c) provides in full:

A recipient may provide legal assistance to a group, corporation, or association if it is primarily composed of persons eligible for legal assistance under the Act and if it provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel.

We have already agreed that the Tribe met the first part of the test, i.e., that the Tribe is "primarily composed of persons eligible for legal assistance under the Act."

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Ernesto G. Sanchez  
December 17, 1993  
Page Two

provides the information necessary to make a final determination. In that letter, the president of the Tribe states that the tribal attorneys:

are funded by specific grants to perform particular duties for the Tribe, primarily governmental grant contract compliance. Since the grants which are available to fund our attorneys are restricted to fund these other projects, they are not permitted to handle ICWA cases.

In addition, the letter goes on to state that the Tribe "continues to lack sufficient tribal attorneys and resources with which to handle this matter."

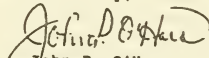
This specific and revealing information, in conjunction with all the other documentation you have provided the Corporation in this matter, leads me to conclude that the Tribe meets the eligibility requirements of Section 1611.5(c).

For your information, I am enclosing a copy of the letter I sent to Ralph J. Gines, the attorney representing Mr. Leland H. Swenson, the complainant in this matter. I informed Mr. Gines that the Corporation was continuing to look into this matter and would inform him of the Corporation's decision as soon as possible. I intend to inform Mr. Gines of this decision promptly.

Thank you for your patience and cooperation in this matter. I am confident that this letter adequately responds to your concerns. Please let me know if I can be of any additional assistance.

With every best wish,

Sincerely,

  
John P. O'Hara  
President



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June 5, 1996

Letters-to-the-Editor  
The Washington Post  
1150 15th St., N.W.  
Washington, D.C. 20071

Dear Letters Editor:

William Booth (Attacked as Left-Leaning, Legal Services Suffers Deep Cuts, June 1, 1996) did a remarkable job illustrating the purpose and need of the Legal Services Corporation (LSC) and legal services for the poor. There were however, a couple of points requiring response.

LSC critic Rep. Charles Taylor (R-N.C.) said he asked whether we had ever helped throw a drug dealer out of public housing or "stepped forward to help on the moderate or conservative front." Although a review of the recent hearing record reveals no such request for information, we would like to answer.

In Rep. Taylor's own district, Pisgah Legal Services often advises and assists public housing tenant associations to obtain federal drug elimination grant funds for improved security at housing complexes. In 1995, Legal Services of Southern Piedmont (LSSP) represented public housing residents who jointly sponsored with the Charlotte (N.C.) Housing Authority a bill in the state legislature to expedite eviction of drug dealers from public housing. The bill is now law. Also last year, LSSP and volunteer attorneys from the Charlotte law firm of Poyner and Spruill closed two drug houses by negotiation with landlords. LSSP with pro bono lawyers from another local law firm, Cozen and O'Connor, filed suit to close a third drug house. LSSP is monitoring an investigation into several nuisance locations in four other neighborhoods and is helping five new neighborhood groups seeking help.

(more)

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Legal services programs regularly work with public and low-income housing tenants to help them achieve economic self-sufficiency, form tenant management and maintenance service organizations, establish neighborhood crime watches and create safe recreational areas for children---all of which serves directly or indirectly to deter drug activity.

Opponents of legal services claim we have made a practice of blocking evictions of drug dealers from public housing. Although that claim is absolutely false, LSC's Board of Directors has sought to put the matter to rest. It has expressly prohibited programs from handling any eviction cases where drug dealing is alleged.

In response to the second part of the inquiry, the answer is "no." We have never stepped forward to help on the moderate, conservative---nor, for that matter, on the liberal front---because, as we have long maintained, LSC and legal services take no ideological position on issues. We take on cases not causes, and we find it curious that a Congressman who has long decried legal services' "liberal" ideological bent as inappropriately partisan, would suggest that politics are okay if they are his politics. In our experience, liberal or conservative has little meaning to a battered woman seeking legal restraint of her abuser.

Mr. Booth was absolutely right---most of what we do is "excruciatingly mundane." There is no grand legal services conspiracy to liberalize America. Rarely do we paint in bold strokes. Ninety-nine point nine percent of what we do is routine or seems so to everyone but the client who is faced with homelessness or helplessness. To maintain a national system of legal services for the poor federal funding is essential. Wishful thinking will not change that fact and we should not be lulled by the feel-good rationalization that others can do it. The relatively modest federal contribution supports the national commitment to justice and fair treatment for all citizens. It stands between hope and despair.

Sincerely,



Alexander Forger

President

Legal Services Corporation

LETTERS  
TO THE EDITOR

abortion, contraceptives, euthanasia, LSC PROBE STILL PENDING and fetal tissue research. At the same time, these cretins lobby constantly for "affirmative action" and open borders for illegal aliens.

Predictably, Riskin's criticism of gene-patenting stems from his knee-jerk aversion to eugenics. However, no one with even a modicum of intellectual honesty can doubt that genetic factors play a key role in many of society's extant ills (see e.g., *The Bell Curve*, Herrnstein and Murray). No less a legal luminary than Oliver Wendell Holmes recognized this in 1927 when he stated, in *Buck v Bell*, 274 U.S. 200, "Three generations of imbeciles are enough." Certainly, one need not embrace the coercive aspects of that decision to realize that the promise of eugenics militates not against, but in favor of, gene-patenting technologies. If only we could isolate and eliminate the gene responsible for officious intermeddlers.

MOSS GROPEN  
Del Mar

I am writing to correct an inaccuracy in your article concerning the decision of the Legal Aid Society of Santa Clara County to respond to proposed congressional restrictions on grants from the Legal Services Corporation (LSC) by initiating the creation of a new program to apply for LSC funds ["Legal Aid Divides to Conquer," *California, Esq.*, February].

As I told your reporter, LSC's responsibility under such circumstances is to determine whether the two programs are in fact independent or whether they are interrelated organizations, with one program retaining control over the other. LSC's standards for making this legal and factual determination are based upon indicia developed by the General Accounting Office and incorporated into LSC's Audit Guide.

We are currently examining the Santa Clara County situation. Contrary to what your article suggested, it is still premature to say whether it will be approved. If LSC determines that the two programs are interrelated, it will

deem the LSC restrictions apply to both, so that if either program engages in restricted activities, the grant to the LSC recipient will be subject to termination.

Your article was also potentially misleading in that it failed to explain that LSC's pending appropriations bill would for the first time make virtually all restrictions on the use of LSC funds applicable to non-LSC funds as well. Many LSC-funded programs also receive grants from state and local governments, private charities, and other sources for types of representation that will be prohibited under the pending appropriation bill. They are now facing the choice of turning down either these funds or the LSC funds.

Under these circumstances, programs may decide to cooperate in the creation of separate new entities in order to preserve funding for legal services to poor Americans. As long as the new program is in fact independent of the old, this should not be seen as an attempt to evade or frustrate the will of Congress. On the contrary, by making it completely

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 LETTERS  
 TO THE EDITOR
 

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clear that LSC funds are not being used, directly or indirectly, to support any restricted activity, it accomplishes precisely what Congress intended.

ROBERT ECHOLS  
*Assistant to the president*  
*Legal Services Corporation*  
*Washington, D.C.*

**MORTGAGING YOUR PRESENT**

I read with glee the article about Boston Harbor and New England Financial ["Mortgage Breakers," California, Esq., February], both of which claim to be able to solve all of the problems of a borrower who owns property mortgaged for more than its value. For years I have been advising clients and realtors that these sham transactions are ineffective in solving the problems faced by homeowners, which usually are not as bad as the homeowner thinks.

The best answer is that a borrower who is in trouble on one property and wants to buy a new home should

first buy the new home (while his credit is good) and then negotiate a short sale with the lender on the old home. In any event, competent legal and tax advice should be sought before acting.

MARC S. WEISSMAN  
*Watt & Weissman, Inc.*  
*San Francisco*

**SELF-RIGHTEOUS INDIGNATION**

I am quite appalled at the self-righteous reaction (Letters to the Editor, February) to the Robert Wieder article ["How to Sleep at Night," November 1993] by a law student and what I presume to be a new lawyer probably practicing civil litigation. While I generally disagree with many of Wieder's views, these people are in severe need of a reality check.

After five years as a deputy public defender in two counties, I can say that I must frequently represent clients who are clearly guilty of the crimes of which they are accused. I also frequently represent clients who are guilty of some

crime, but not one as severe as the one they are accused of committing. And believe it or not, I also frequently represent innocent clients who are being zealously over-prosecuted by some "baby district attorney" who wants jury trial experience and refuses to hear the truth.

Why do I do this? Because of something that seems to have been overlooked by those who responded to the article. The Constitution guarantees a fair trial to *everyone* accused of a crime. The right to a fair trial encompasses the right to the effective assistance of counsel, a concept your readers do not seem to understand.

Perhaps the readers who responded to the article would be well advised to remember that we are *representatives* of our clients, whether they are individuals or corporations, criminal defendants or civil litigants. I believe we all took the same oath when we were sworn in. Your readers should perhaps review it.

LORI A. QUICK  
*Santa Cruz*

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**MICHIGAN MIGRANT  
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July 3, 1996

The Honorable Jack Reed  
Ranking Member, Subcommittee on  
Commercial and Administrative Law  
Congress of the United States  
House of Representatives  
Committee on the Judiciary  
2138 Rayburn House Office Bldg.  
Washington, D.C. 20515-6215

Dear Congressman Reed:

Thank you for your letter of July 1 providing Michigan Migrant Legal Assistance Project, Inc. (MMLAP) and me the opportunity to review the statements of and asking us to respond to the testimony of Chris Searer.

Due to constraints of confidentiality and privacy, a greater context for the following comments is not possible. However, it may be enough to note that Ms. Searer left the program close in time to her next scheduled evaluation last year and that the Program contacted its attorney as well as a psychologist to explore a violence in the work-place policy. Moreover, almost anyone who has managed people will have had experience with disaffected, angry former employees. The responses follow Ms. Searer's testimony *seriatim*.

As I am unable to determine what the "lack of conservation of resources" specifically means I am unable to respond. However, I would submit that the Program has been highly successful notwithstanding an extremely sparse and insecure budget for years. We are very careful with our limited monies. The Board of Directors of the Program is far from inactive and does not "rubber-stamp" decisions. That does the six lawyers and two client members presently on the Board a great disservice and is patently incorrect. It may be simply that they did not respond to Ms. Searer's complaints in the manner in which she wished and therefore she has taken to describing them in this fashion.

As to the list of allegations:

1. Every effort is made to hire bilingual/bicultural attorneys. Given the salaries we can pay, our climate, and the limited population of these persons, this is extremely difficult. Four of the last five offers to attorneys have gone to hispanic, native speakers. Only one has accepted and he will begin in August of this year. It is ironic that Ms. Searer was hired in no small measure because of her bilingual skills.

2. Purchasing computer equipment brought the program further into the age of technology by upgrading ancient computers to 486 machines which have allowed for networking and access to a statewide pilot e-mail system.

3. The description of "ill-conceived class action litigations" is one utilized by Ms. Searer who often misunderstood the nature of many of our cases. It is gross overstatement to say that all of the resources were focused on class action litigation. Most of the cases closed by the program are actually multiple, individual litigation or by advise and counsel.

4. As I 'am unable to decipher what "fostering" of teamwork and organizational systems means, I am unable to respond. Given limited resources and depth of client problems over the Program's quarter of a century history, it has been extremely efficient in delivery of legal services.

5. I do not speak Spanish.

6. This is denied for the reason that it is untrue. Complaints have been filed, none have been substantiated. It is untrue that in the Grand Rapids' office the only spanish-speaking person was laid-off. There are others.

Ms. Searer alleges that she was pressured to "manufacture" federal impact litigation. That is simply untrue. We do not manufacture cases. Cases come to us and we pursue them. There are issues which continue to present themselves, e.g., "sharecropping"/independent contracting. It is also ironic that Ms. Searer would now claim that she was pressured to do so when one of the other reasons that she was hired was her claimed interest in doing impact litigation.

Her claim of unethical practice is falls within the constraints of what might be called the theory of "throwing stones in glass houses". See, copy of article from *The Grand Rapids Press* attached hereto.

Alternative dispute resolution procedures are consistently pursued. They tend to be less than effective in the agricultural

labor context however. We have been aggressive in litigation. The reason for that is that the problems of farmworkers are so endemic and systemic that they tend to need broader scale responses. See, e.g., "After 30 Years, America's Continuing Harvest of Shame", Hearing Before the Select Committee on Aging, 101st Cong. 2d. Sess. April 24, 1990 and Report of the Commission on Agricultural Workers (1992).

It is untrue that Ms. Searer was pressured or penalized for not imposing a "far left political philosophy".

No case of malpractice has ever been filed against the program and I am not certain that Ms. Searer is capable of identifying such case in any instance.

It is true that we have taken a very conservative approach to use of our LSC funds and have never represented undocumented aliens.

The assertions of "manipulations of funds and timekeeping to effectuate [my] purpose" is without definition as to what that purpose is; it is denied that we manipulate funds or procedures to effectuate some personal or programmatic purpose other than the priorities established by the Board of Directors.

One attorney was found to have engaged in the outside practice of law. Upon investigation in detail it was determined to be relatively innocent. He claimed to not understand the regulation and the amount of money involved was minimal. He was disciplined and an agreement arranged in which he agreed to do no outside work again and that he understood the regulation involved.

It is likely true that in exercising my own first amendment rights I might wear shirts or pins of my political choices. However, before going to law school I was a graduate student in political science and still believe that democracy is the best approach, if not necessarily the most efficient. In no way is there any political litmus test here nor were staff members asked how they would be voting. I, of course, hoped that they would vote their consciences and do that which was best for our clients and poor people throughout the Country. No staff member received any case assignment based upon their party affiliations. This assertion is of whole cloth. In point of fact, I do not know the political affiliations of members of the staff. I can suspect what Ms. Searer's affiliation might be particularly vis a vis guns which are a major issue to her.

As to the fundraising letter sent out by MMLAP, it indicated only that which was in the public record and, in fact, had appeared in the Grand Rapids Press. Moreover, the name of the family was not used. Later the family became clients. All we did was try to assist with translation and logistics during the first hectic,

emergent days. Ms. Searer's claim of a common law cause of action bears close legal scrutiny, as it is highly attenuated, at best.

There has been reason for "alarm" regarding funds. As I am certain members of this Committee are aware, the funding of legal services has been up and down over the years and desperately in jeopardy in the last two years. I did appear in a press article indicating that I would lay myself off due to funding cuts. This was during the continuing resolutions. When funding was finally resolved, there were sufficient funds that that became unnecessary. As such, it did not occur.

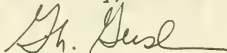
We did hire consultants to look into fundraising at a cost of a little over \$2,000. It seems only appropriate to determine what avenues might be most effective in trying to raise other funds.

Ms. Searer continues to misapprehend *Roman v. Korson* (the so-called "Farmers Home" case). The case involves a regulation issued by the Agency regarding the § 514 Farm Labor Housing Program which allowed for "waivers of loan agreements" to be granted by state directors of Farmers Home to farmers who "received no rental income" from that farm labor housing. Also involved is a regulation which requires that a series of standards to be met if any charges are to be made of any sort including notice, opportunity to comment, formal approval, etc. As anyone who reads the printed decisions will discover, this was not ill-conceived. In fact, it is precedential. See, *Roman v. Korson*, 152 F.R.D. 101 (W.D. Mich. 1993) (class certification); 129 Lab. Cas. (CCH) ¶33,174 (W.D. Mich. June 6, 1994) (AWPA-jury trials); 918 F. Supp. 1108 (W.D. Mich. 1995) ("abdication of regulatory responsibility" and arbitrary and capricious regulation). Moreover, we complied with the LSC regulations by informing the Secretary of Agriculture of our intent to file and asking that the Agency act upon the two Office of Inspector General Reports of the Department of Agriculture which had told the Agency that there had been widespread violations in this program (one in 1986 and another in 1990). The Secretary failed even to show the courtesy of responding. The State Director did call for a meeting but was not authorized to provide relief in any significant fashion. Therefore, the matter was amended to sue on behalf of all farmworkers throughout the Country who had been wrongfully charged in this program. It is likely probably true that a number of agricultural employers are frightened of this lawsuit -- likely because forcing compliance with law is sometimes a frightening proposition. This is, however, what lawyers do. Moreover, when Ms. Searer refers to a much cheaper and mutually satisfactory result, she is notably unclear as what that could have been. As stated before, the Agency was unwilling to undertake to remedy the wrongs done over the course of a decade. Therefore, I am unable to speculate what Ms. Searer may have had in mind when she talks about cheaper alternatives with "mutually satisfactory" results. We undertake all possible alternatives we can to settle matters:

there is simply too much to do to create unnecessary litigation. Also, this case is a wonderful example of *pro bono*. Co-counsel is a large Detroit firm which will be taking this case over as, after seven years of work, MMLAP has moved to withdraw -- as mandated by the Appropriations Act.

Thank you for this opportunity to respond. If there are any further questions please feel free to contact me. As I do not have a copy of the transcript of questions and answers, I cannot comment. I would be pleased to do so once I have read the transcript.

Sincerely,

A handwritten signature in dark ink, appearing to read "G. N. Gershon", with a stylized flourish at the end.

Gary N. Gershon

d-gng

## Lawyer's tactics in question

► *The attorney for the family of the kidnap victims meets with the suspect without telling his attorney.*

By Ann Shackelford  
The Grand Rapids Press

LANSING — Smiling, even laughing once or twice, Boyd Deen Weekley seemed at ease Wednesday during the final hearing before his upcoming trial on charges he kidnapped two young Benton County brothers. His smile faded, though, when he tried to fire the lawyer who has represented him since last fall.

In the court-appointed attorney Jeffrey O'Hara was upset long before Weekley asked that request. He argued that the lawyer for the family of the victims breached legal ethics by meeting with Weekley in jail.

Speaking slowly and deliberately,

O'Hara said attorney Chris Searer called him last week to say she thought "she could get Mr. Weekley to plead guilty," she could get him to do the right thing.

Searer, of Spring Lake, "did not ask my permission to speak to" Weekley but "personally visited" him at the Newaygo County Jail, O'Hara told U.S. District Judge David W. McKeague.

"I know they met Friday, possibly for two hours," he maintained. "I do not know what was said." Although Weekley telephoned Searer and requested the visit, Searer should know a lawyer doesn't visit another lawyer's client, O'Hara said.

U.S. Attorney Michael Dettmer assured McKeague "the government in no way, shape or form was involved in these contacts" between Searer and Weekley.

McKeague ordered Searer not to divulge any of her conversation with Weekley to Dettmer or the media. She also must tell O'Hara if Weekley tries to contact her again or if she plans to contact him. O'Hara then may advise his client or approach the court if he feels the code was violated, McKeague said.

Weekley, 25, of Sioux Falls, S.D., is charged with kidnapping 11-year-old Adrian Alvarado and his brother, Eleazar, 5, from a Benton Harbor shopping center in October. Authorities say he traveled with the youngsters for 10 days before the FBI arrested him in New Orleans.

After explaining McKeague's order to Weekley Wednesday, O'Hara told the judge Weekley "does not want to follow (my) advice" not to contact Searer again. His

## WEEKLEY

*Kidnapping trial is scheduled to start Tuesday*

plead rather than go to trial.

The trial, which is to start Tuesday, is expected to last a week. Weekley is charged with two counts of kidnapping, one of transporting a minor across state lines intending to engage the youngster in sexual activity and one of driving a stolen car across state lines.

If convicted, he faces life and a \$250,000 fine on each kidnapping charge, 10 years and \$250,000 on the other two counts.

Meanwhile, McKeague said he would listen to arguments Tuesday on the prosecution's sealed request to close the courtroom to the public if either of the young victims testifies. His decision will cover such testimony whether it is in the courtroom, by videotaped interviews or on closed-circuit TV, he said.

McKeague also will hear arguments on Weekley's claim that he wasn't notified of his rights after his arrest and a request that statements be made then he was pressed.

advice wouldn't change, he said, and if Weekley "didn't like that answer, he could ask for another lawyer."

Repeating that he didn't want Weekley's right to a fair trial "compromised," McKeague told the defendant, "if you have information that you want to provide to the government, then the arena for you to do that is through your attorney."

"Well, then I fire my attorney," Weekley said. "I request a change of attorneys within the next 24 hours. I would delay the trial, I don't ask Weekley if he understood the order," Weekley said. "No," then refused to speak again.

He directed O'Hara to give Searer a note from him at the hearing's end, she left the courtroom without reading it. She said later she did nothing wrong in talking with Weekley, who she hoped would



Boyd Deen Weekley

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(816)474-6750 • Fax (816)474-9751

Richard J. Holliborne  
Executive Director

## LEGAL AID OF WESTERN MISSOURI

July 3, 1996

Honorable Jack Reed  
Ranking Member  
Subcommittee on Commercial and  
Administrative Law  
Committee on the Judiciary  
2138 Rayburn House Office Building  
Washington, D.C. 20515-6216

Dear Congressman Reed:

These comments are submitted as you requested in your letter of July 1, 1996, in response to the testimony presented by Sallie Colaco in front of the House Judiciary Subcommittee on Wednesday, June 26, 1996, during the Committee's oversight hearing on the Legal Services Corporation. I have reviewed the prepared statement regarding activities of Legal Aid of Western Missouri (LAWMO) dated June 24, 1996, and it is my understanding that Ms. Colaco presented this prepared statement on June 26, 1996, to the Subcommittee. In her testimony, Ms. Colaco raised numerous issues. I will attempt to address each of these issues; however, some of the issues that were raised are incomprehensible and, therefore, do not merit a response. Overall, Ms. Colaco's testimony was false, misleading, and defamatory.

On page 2 of Ms. Colaco's statement (hereinafter "statement"), Ms. Colaco notes that Julie Levin was key in the selection of TAG-KC as the receiver of the Housing Authority of Kansas City, Missouri (HAKC). Julie Levin was not "acquainted" with Dick Bluestein, the attorney for TAG, as Ms. Colaco suggests. Ms. Levin may have spoken to Mr. Bluestein in 1991; however, her conversation was short and his name was given to her as someone who worked in Legal Services and the Boston Housing Authority. Ms. Levin did not speak to Mr. Bluestein again until his name was provided as a reference for TAG when TAG applied to be the receiver of Kansas City, Missouri in 1994.



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In her capacity as a member of the Advisory Committee to select a receiver for HAKC, Ms. Levin was asked to call the references for the final applicants to assist the Advisory Committee in making a recommendation to Judge Whipple for the appointment of a receiver. The Advisory Committee consisted of numerous representatives from the community including Alleen VanBebber, the Assistant U.S. Attorney representing HUD in the Tinsley lawsuit, and United States Magistrate Robert E. Larsen. Tinsley is the lawsuit that caused HAKC to be placed in receivership. Ms. Levin had no prior knowledge of or acquaintance with TAG Associates. Ms. Levin first heard of TAG when TAG applied to be the receiver for Kansas City, Missouri. Ms. Levin was not paid any fee to locate TAG as the receiver nor has she been given any kind of remuneration or compensation for recommending TAG as the receiver. Ms. Levin recommended TAG as the receiver because TAG was the most qualified applicant to perform the job. The members of the Advisory Committee unanimously recommended TAG to be the receiver.

On page 3 of the statement, Ms. Colaco claims that Ms. Levin filed an improper attorney's fees application in the Tinsley lawsuit. Pursuant to 42 U.S. C. §1988, the prevailing party in a lawsuit is entitled to his or her attorney's fees. Ms. Levin represented public housing tenants in the Tinsley v. Cisneros lawsuit to obtain the complete modernization of Theron B. Watkins, a public housing development operated by HAKC and to obtain the desegregation of public housing in Kansas City, Missouri. The plaintiffs in that lawsuit, represented by Ms. Levin, prevailed in their case. A consent decree was entered in the case requiring HAKC and HUD to fully modernize Theron B. Watkins and to desegregate public housing in Kansas City, Missouri. HAKC and HUD violated the consent decree and, after a motion for contempt was filed by Ms. Levin on behalf of her clients, HAKC and HUD were held in contempt of court. HAKC and HUD violated the contempt order and, after another hearing on July 6, 1993, Judge Whipple, the U.S. District Court Judge overseeing the case, placed HAKC in receivership.

As prevailing parties in the Tinsley case, plaintiffs were entitled to attorney's fees. Ms. Levin filed a motion for attorney's fees on behalf of her clients which set forth all of the time that she had spent on the case. All of the time that Ms. Levin requested for compensation was necessary time spent on legal work. Ms. Levin did not request

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compensation for any time spent on clerical duties or for any improper activities. We refer the Committee to the Tinsley court file, Tinsley v. Cisneros, Case No. 89-0023-CV-W-1 in the Western District Court for the Western District of Missouri, Western Division, and to Alleen VanBebber for verification of this and other matters discussed in these comments. Also, please see the attached article from the Kansas City Star of June 27, 1996. The attorney's fees of course were paid to Legal Aid of Western Missouri, not personally to Ms. Levin, and became part of Legal Aid of Western Missouri's operating budget.

Prior to Ms. Colaco's employment at HAKC, the receiver advised Ms. Levin that HAKC wanted to negotiate an agreement to pay the attorney's fees incurred in the Tinsley case. When Ms. Colaco was hired by HAKC, Ms. Colaco filed objections to the receipt of attorney's fees by LAWMO. Ms. Colaco did not confine her objections to the facts and law. Rather, her objections were personal, vindictive and misleading. When Ms. Levin received the objections, she contacted the receiver and questioned the receiver as to why such vehement objections were filed. Ms. Levin had permission to talk directly to the receiver and to the executive director through the receiver's attorney, Dick Bluestein.

The receiver advised Ms. Levin that he would have Ms. Colaco sit down and negotiate the attorney's fees with her. No tantrum occurred by Ms. Levin. No suggestion was made by Ms. Levin as to the competence or abilities of Ms. Colaco. Ms. Levin merely raised questions as to why HAKC was vehemently opposing her motion for attorney's fees when the receiver had already indicated that HAKC was willing to negotiate the fees. The fees were ultimately negotiated and a court order was entered requiring the payment of fees. It should be noted that Ms. Levin did not request compensation for any improper activities. All of Ms. Colaco's allegations concerning the impropriety of the fee request are false as can be established by the Tinsley court record.

It should also be noted that when Ms. Colaco filed her brief in opposition to the receipt of attorney's fees by LAWMO, Ms. Levin inquired into the existence of a conflict that was raised by Ms. Colaco's representation of HAKC in the Tinsley case. As previously stated in my June 25, 1996 letter to Agnieszka Fryszman, as part of the record of these hearings, Ms. Colaco formerly worked for LAWMO. In her capacity as an employee at LAWMO, Ms. Colaco assisted Ms. Levin on the Tinsley lawsuit. An ethical conflict is

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created when an attorney represents both the plaintiff and the defendant in the same case. Therefore, once Ms. Colaco took an adversarial position against her former client, the plaintiffs in Tinsley, a conflict was created. Attached to my June 26, 1996 letter is a brief filed by Julie E. Levin on behalf of her clients raising the conflict. A review of the brief will show that Ms. Colaco was not truthful in her representations to the court as to the work that she performed on the Tinsley case. Ms. Colaco gave an affidavit to the court stating that she only did clerical work on Tinsley and very little work at that. Ms. Levin established in her brief that Ms. Colaco failed to tell the truth about her activities on the case. Subsequent to the filing of that brief, Ms. Colaco became indignant towards Ms. Levin and refused to return phone calls or respond to letters. This conduct persisted throughout the remainder of Ms. Colaco's employment at HAKC.

On page 4 of the statement, Ms. Colaco refers to having obtained bids from private attorneys to monitor the consent decree for \$5,000.00 a year. First, HAKC would not have the right to have a private attorney monitor the consent decree on behalf of plaintiffs. Plaintiffs' attorney is and was Julie Levin. Plaintiffs have the right to choose their own attorney. Secondly, Ms. Colaco could likely have found an attorney who would do \$5,000.00 worth of work in monitoring the consent decree. That would probably entail receiving HAKC's monthly report, reading the report and filing it. It would not involve the very close monitoring and raising of objections which exist currently with the monitoring of the consent decree by Ms. Levin. Ms. Levin necessarily attends weekly meetings with the receiver and/or executive director and all public housing resident leaders. At those meetings, the requirements of the consent decree are reviewed and on-going problems are raised and solutions proposed. Ms. Levin also reviews all documents of procedures and practices by HAKC that affect the consent decree. She documents all of her reviews and sends letters of inquiry on any issues that are brought to her attention by her clients. Ms. Levin spends approximately 90% of her time monitoring the consent decrees against HAKC and HUD. These are highly complex consent decrees with very technical requirements. Only an experienced attorney with knowledge of the history, law and requirements imposed by the court would be able to do an effective job of monitoring the consent decree. The negotiated fee for Ms. Levin's monitoring the Consent Decree is a fraction of the market rate for an attorney of her experience.

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On page 4 of the statement, Ms. Colaco recounts a direction that she received from TAG to analyze the regulatory compliance of all tenant organizations. Ms. Colaco refers to 24 C.F.R. part 964. Prior to her analysis, the regulations had changed requiring certain provisions to be made in the by-laws of all tenant organizations. Because it was a recent regulatory change, the by-laws of most of the resident organizations did not comply with the new regulations. After Ms. Colaco's review, she sent a memo to all resident organizations advising them that they were out of compliance with the regulations and, therefore, could not be recognized by HAKC as a legitimate resident organization of their respective public housing development and that they would not be allowed to have any input into any of the policies or matters of HAKC. All of Ms. Levin's clients, the resident organizations, were very upset when they received this memo. Ms. Levin, however, did not respond by having a tantrum or by maligning Ms. Colaco's character. All of the accusations Ms. Colaco makes are false. Rather, Ms. Levin sent a letter to HAKC, requesting that, pursuant to the federal regulations, HAKC prepare model by-laws that HAKC would like the resident organizations to adopt. Ms. Levin also requested that HAKC continue to do business with the resident organizations during the time required for the organizations to adopt new by-laws. The receiver was very receptive to this proposal and arranged to have a private attorney draft model by-laws for the resident organizations. Ms. Levin then reviewed the model by-laws and assisted some of the resident organizations in adopting them.

On page 5 of the statement, Ms. Colaco states that Ms. Levin called her incompetent and not pro-tenant and stated that Ms. Colaco had no business being the general counsel for HAKC. These allegations are false. At no time did Ms. Levin malign Ms. Colaco's character or reputation. Several of Ms. Levin's clients, however, did request that the receiver locate another general counsel. Ms. Levin did not publicly concur with her clients in this request.

Also on page 5 of the statement, Ms. Colaco suggests that Ms. Levin acted improperly by asking HAKC to execute a contract for the relocation of one of her clients to a scattered site unit. This incident involved a resident of Riverview Gardens who had six (6) children. Riverview Gardens is a public housing development operated by HAKC and is the subject of the lawsuit, Boles v. Cisneros, Tinsley v. Cisneros, Case No. 92-0526-CV-W-9 in the Western District Court for the Western District of Missouri, Western Division, filed by Ms. Levin on behalf of the Riverview

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Gardens residents to seek the modernization of an uninhabitable 232 unit development. The public housing residents were successful in their lawsuit and obtained \$17 million dollars to fully modernize Riverview Gardens. As a result, residents had to be relocated from their units to other units in order for the renovation to be conducted.

Most residents were relocated from one half of Riverview Gardens to the other half while the first half was being renovated. However, there were no four-bedroom units available for the relocation of Ms. Levin's client. Therefore, HAKC offered to temporarily relocate Ms. Levin's client to a scattered site unit. Ms. Levin negotiated a contract for the resident so that the resident could be relocated back to Riverview Gardens when the units were renovated. The relocation to a scattered site unit was fully proper. Furthermore, any allegations by Ms. Colaco that the affected client was involved in drug dealing is totally defamatory. In fact, the relocated client (now deceased) was a model resident leader who fought against drugs in public housing throughout her life. Ms. Colaco did not like this client because the client objected to Ms. Colaco's anti-tenant tactics. That is the sole reason why Ms. Colaco objected to the client's relocation and why she now makes defamatory claims concerning the client's involvement in drug dealing. Our analysis of this incident can be confirmed by the receiver of HAKC.

On page 6 of the statement, Ms. Colaco claims that Ms. Levin intervened on a resident's behalf to halt the eviction of the resident who was allegedly harboring a former public housing resident who had been evicted by HAKC. This incident involved one of Ms. Levin's clients, a mildly mentally disabled man, who allowed an evicted tenant's children to stay with him for an afternoon while the evicted tenant attempted to look for housing. He did not allow the evicted tenant nor her children to live in his unit. He was merely watching the children for an afternoon. These facts were confirmed, and HAKC dropped any eviction proceeding against the client. No eviction action was filed in court and no hearing was necessary because once the facts became known, there was no justification for an eviction.

On page 7 of the statement, Ms. Colaco contends that LAWMO "...oppos[ed] legislation providing to landlords an expedited eviction procedure for tenants involved in drug-related activity." First, LAWMO does not take any positions on legislation. LAWMO staff attorneys, on behalf of clients and as members of the Missouri Bar Association's Property Law Committee, have negotiated with the attorney for a

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landlords' organization on proposed landlord-tenant legislation and have brought to the attention of elected officials the effect the proposed legislation would have on their clients. With regard to Ms. Colaco's specific allegation, the "expedited eviction procedure" would have permitted a landlord to evict a tenant on very short notice with no more than an allegation of drug-related activity. In our attorneys' experience, some inner-city landlords would use such a provision against those who were not in fact engaged in drug-related activity in order to circumvent current eviction procedures which do comply with the requirements of due process. That proposed legislation contained many other draconian measures that would have substantially altered tenants' rights under existing law. Other legislative work referred to by Ms. Colaco has been done at the request of one or more state legislators. All legislative advocacy by LAWMO staff has been done strictly in accordance with the requirements of 45 C.F.R. §1612 and have been duly reported to the Legal Services Corporation.

On page 7 of the statement, Ms. Colaco maligns all LAWMO attorneys by stating that they "routinely renege on settlement agreements" and have "uncontrolled outbursts of temper tantrums and pouting." We cannot determine what LAWMO attorneys Ms. Colaco could be describing. None of our attorneys engage in such practices. All of our attorneys are highly ethical and professional. No complaint has come to me, nor am I aware of any complaint, that any LAWMO attorney has done any of these things.

On page 7 of the statement, Ms. Colaco claims that Ms. Levin interfered with her position at HAKC by launching "vicious attacks" against her in public. Ms. Levin never engaged in any improper behavior towards Ms. Colaco. Ms. Levin has always acted with the utmost of professional conduct in her dealings with Ms. Colaco, the receiver and her clients. The only incident that we are aware of involving an outburst of temper was a "tantrum" performed by Ms. Colaco. In a meeting in which Ms. Levin and her paralegal, Betsey Molinaro, participated with Ms. Colaco and Eugene Jones, HAKC's executive director, Ms. Colaco became very belligerent and even shouted at her boss, Mr. Jones. We suspect that this incident in combination with other similar incidents resulted in the termination of her employment. However, Ms. Levin did not participate in the decision to terminate Ms. Colaco.

On page 8 of the statement, Ms. Colaco claims to have learned recently that other LAWMO attorneys have made attempts to obtain financial information from HAKC and that

July 3, 1996

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their attempts were allegedly thwarted by Ms. Levin. This is totally false. No LAWMO attorneys have been instructed by Ms. Levin not to pursue actions against HAKC. In fact, Ms. Levin assists and encourages LAWMO attorneys to pursue claims on behalf of their clients against HAKC.

With regard to Ms. Colaco's allegation that Ms. Levin did not want any questions raised about the finances of HAKC, we have attached a copy of a letter that Ms. Levin sent which establishes her own inquiry into the expenditures of funds by HAKC. This letter is indicative of the frequent letters sent by Ms. Levin inquiring into the practices and policies of HAKC. This is done as part of her job in monitoring the consent decrees affecting her clients. Ms. Levin found no impropriety in HAKC's finances, nor has the Federal District Court that oversees HAKC.

On page 8 of the statement, Ms. Colaco alleges that many public housing residents are reluctant to go to LAWMO. This is totally false. LAWMO receives countless requests from public housing residents for representation. All of the meritorious applications are accepted by LAWMO.

On page 9 of the statement, Ms. Colaco claims that she has been effectively blackballed by a significant portion of the legal community because of Ms. Levin. Neither Ms. Levin nor I have ever received a request for a recommendation or opinion about Ms. Colaco with the exception of the initial request from Jeffrey Lines of TAG when Ms. Colaco first applied for the general counsel position at HAKC. On that occasion, Ms. Levin advised Mr. Lines that Ms. Colaco did a good job when she worked at LAWMO and that she would be a fine candidate for general counsel. Since that time, Ms. Levin has never commented on whether Ms. Colaco should be recommended for any position. Ms. Colaco is delusional in her belief that Ms. Levin is trying to blackball her in the legal community.

Because of the nature of Ms. Colaco's comments, I could go on at length responding to the various innuendoes and charges made in this statement. If this Committee considers the Colaco testimony to be at all credible, I urge the Committee to contact HAKC for its explanation as to why Ms. Colaco was fired and it should contact Alleen VanBebber, the Assistant U.S. Attorney who represents HUD in the Tinsley case. These sources will reveal that none of Ms. Colaco's claims has merit. Please see the attached article from The Kansas City Star.

July 3, 1996  
Page -9-

Although I appreciate the opportunity to comment on the Colaco statement, I am frankly very concerned that this Committee would hear the unsworn testimony of someone like Sallie Colaco without corroboration and without inviting Legal Aid of Western Missouri to offer rebuttal testimony. I hope that at least after the fact this Committee will keep an open mind and will not be willing to condemn the important work of legal services organizations across the country on the basis of this kind of defamatory testimony. It is also my hope that the Committee will recognize that the work of LAWMO staff attorney, Julie Levin, will result in the rehabilitation of several hundred units of housing for very low-income residents of Kansas City. The tenants who will be occupying these units would otherwise have likely been added to Kansas City's substantial homeless population. I hope also that the Committee will understand and appreciate the extraordinary efforts of Ms. Levin and the other staff at Legal Aid of Western Missouri who work extremely hard for very little pay to bring some measure of justice to our clients.

Thank you for the opportunity to submit these comments on Ms. Colaco's testimony.

Sincerely,



Richard F. Halliburton  
Executive Director

RFH/cjg

600 Lathrop Building  
1805 Grand Avenue  
Kansas City, MO 64104  
(816)474-6758 • fax (816)474-9751

Richard F. Halliburton  
Executive Director

# LEGAL AID OF WESTERN MISSOURI

February 7, 1996

Mr. Eugene Jones  
Housing Authority of Kansas City, Missouri  
712 Broadway  
Kansas City, Missouri 64106

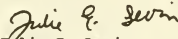
Re: HAKC 1996 Budget

Dear Mr. Jones:

I am in receipt of your letter dated February 2, 1996, which was in response to my January 3, 1996, letter inquiring into the allocation by the Housing Authority of a certain percentage of COMP grant or development funds for management expenses. Your letter indicates that the performance chart section of each monthly report indicates the source of funds for administrative expenses.

In the December, 1995 monthly report, the performance chart B regarding the capital improvements funding matrix does spell out the development and COMP grant funds received by the Housing Authority. However, it does not set out the allocation of funds for administrative and staff expenses. The residents have requested that this specific designation be identified so that we can determine how much funds are going toward administrative expenses. Please provide me with the information as soon as possible. Thank you for your assistance.

Sincerely,

  
Julie E. Levin  
Managing Attorney

JEL/cjg  
cc: Jeffrey Lines  
Edwin Lowndes  
Pat Smith  
PHRC



600 Lathrop Building  
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Richard F. Halliburton  
Executive Director

LEGAL AID OF   
WESTERN MISSOURI

January 3, 1996

Mr. Eugene Jones  
Housing Authority of Kansas City, Missouri  
712 Broadway  
Kansas City, Missouri 64106

Re: HAKC 1996 Budget

Dear Mr. Jones:

I have reviewed the Housing Authority's 1996 Budget with the Public Housing Resident Council (PHRC) and we have been unable to determine from that budget the allocation by the Housing Authority of the 10% funds that it receives for management expenses from its development and COMP grant funds. Please provide the PHRC with an explanation as to the amount of funds that the Housing Authority obtains from its COMP grant and development monies for management expenses and the designation of those funds for various salaries and expenses. Please provide the PHRC and me with this information at the next Receivership Tenants Committee meeting on January 10, 1996. Thank you for your assistance in this matter.

Sincerely,

*Julie E. Levin*

Julie E. Levin  
Managing Attorney

JEL/cjg  
cc: Jeffrey Lines  
Edwin Lowndes  
PHRC



(Kansas City Star, 6/21/96)

# Legal Aid criticized for billings

**Housing Authority of  
KC was overcharged,  
ex-employee claims.**

By JAMES KUHNHENN  
Washington Correspondent

WASHINGTON — A former top lawyer for the Kansas City Housing Authority told a congressional panel Wednesday that Legal Aid lawyers overbilled the public housing agency and sidestepped regulations on behalf of tenants, all with the approval of the authority's private managers.

The lawyer, Sallie Colaco, who was fired a year ago after nine months on the job, said she objected to the various actions but was overruled by TAG Associates, the management consulting firm running the agency under court order.

Others involved in monitoring the troubled agency, however, later disputed Colaco's testimony. They contended that all decisions involving attorneys' fees for Legal Aid of Western Missouri as well as other legal issues have been appropriate.

"There has been nothing improper or illegal," deputy U.S. Attorney Aileen VanBebber said in a telephone interview from Kansas City. "If there were, I certainly would have been quick to draw it to the court's attention."

And TAG Associates President Jeffrey Lines dismissed Colaco's

claims as a "matter of a disgruntled employee."

He said every issue she raised in her testimony had been raised with U.S. District Court. "I don't do anything without discussing it with the federal court," he said.

Colaco, a Democrat running for the Missouri House, was one of several witnesses who testified before a House judiciary subcommittee looking into the Legal Services Corp., the Washington-based organization that funnels money to hundreds of legal services agencies in the country. Congressional Republicans want to kill the corporation and instead pay local legal aid groups with block grants.

Subcommittee Chairman George W. Gekas, a Pennsylvania Republican, called Colaco and other witnesses in an attempt to show that despite recent congressional restrictions on how legal aid lawyers can use federal money, problems continue.

No one representing the Housing Authority or Legal Aid of Western Missouri was asked to testify.

Colaco said Legal Aid of Western Missouri submitted inflated attorneys' fees and later obtained a contract from the Housing Authority for work that she said could have been performed at lower cost by other Kansas City law firms.

At issue was Legal Aid's request for more than \$200,000 in legal fees for its work on a class-action lawsuit that resulted in a court settlement in favor of Housing Authority tenants.

Colaco said she objected to the amount. She claimed Legal Aid lawyer Julie Levin, who filed the class-action suit, billed at attorneys' rates for work done by support staff and billed for work outside the scope of the court settlement.

Colaco said Lines instructed her to withdraw her complaint. She suggested that Levin helped TAG

Associates get the Housing Authority job and that, therefore, a cozy relationship existed between the agency and Legal Aid of Western Missouri.

"Mr. Lines frequently stated, whether in jest or otherwise, that he should pay a finder's fee to Ma Levin for bringing him to Kansas City," she testified.

VanBebber, who sat on the court-appointed committee that selected TAG, and Levin denied that Legal Aid had any undue influence in the decision.

"I am frankly appalled that she said these things," Levin said.

Legal Aid Executive Director Richard Halliburton called Colaco's testimony "mostly outrageous lies."

But a lawyer who worked for Colaco at the Housing Authority, Robin Martinez, supported Colaco's testimony — though he said his impressions were based primarily on information he obtained from Colaco.

"She was trying to represent her client to the best of her ability, but it didn't seem that the powers that be at the Housing Authority wanted that to occur," Martinez said.

Martinez was fired a few months after Colaco, in part for what he said was a misunderstanding involving campaign literature he had promoting Colaco's General Assembly campaign.

VanBebber said she also had objected to Legal Aid's legal fees, but said she found nothing irregular or sinister in the manner in which the fees were paid.

"This is a normal course of events when one side seeks attorneys' fees — one side may object to the size," she said.

The fees ultimately were approved by U.S. District Judge Dean Whipple, who assumed control of the authority in 1993 and eventually turned it over to TAG Associates.

# PHILADELPHIA BAR ASSOCIATION

FRANCIS P. DEVINE, III  
CHANCELLOR

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June 26, 1996

## BY TELECOPY

The Honorable George W. Gekas  
House Judiciary Committee  
Chair, Subcommittee on Commercial & Administrative Law  
Rayburn House Office Building #353  
Washington, D.C. 20515

The Honorable Jack Reed  
House Judiciary Committee  
Ranking Member, Subcommittee on Commercial & Administrative Law  
Rayburn House Office Building #353  
Washington, D.C. 20515

RE: Philadelphia's Public Interest Legal Community

Dear Chairman Gekas and Representative Reed:

When Congress imposed restrictions on certain Legal Services Corporation activities during last year's budget cycle, Philadelphia's public interest legal community was faced with a difficult challenge. Given that our LSC-affiliate, Community Legal Services, had received the majority of its 1995 funding from non-LSC sources, we had to decide if CLS should continue to accept LSC funds even if that meant returning or turning down funding earmarked from foundations and other sources for activities which fell outside the parameters of the new LSC restrictions. The response of the Philadelphia Bar Association and our city's public interest legal community to that challenge is typical of our city's lawyers. We forged an innovative solution which would permit CLS to continue making use of state, private and foundation funding while at the same time PLA could continue to receive and make good use of federal funds in partnership with the newly "reformed" LSC.

Our city has a proud tradition of identifying and responding to the particular legal needs of the community. When in 1966 the leaders of the Philadelphia Bar recognized that the legal needs of the city's poor were not being adequately met, Community Legal Services was created as one of the first legal services programs. When the need for a coordinated pro bono program became clear in 1981, bar and community leaders formed Philadelphia Volunteers for the Indigent Program ("Philadelphia VIP"). As our federal Bankruptcy Court docket became

crowded with consumer bankruptcy filings in the late 1980's, business and public interest lawyers collaborated to create the Consumer Bankruptcy Assistance Project. As the AIDS crisis affect more and more Philadelphians, the AIDS Law Project was created to assist victims of AIDS and HIV with their particular legal problems. Pitching in to do what is needed has become a habit for Philadelphia lawyers.

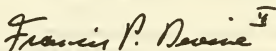
Today in Philadelphia, there are more than twenty public interest law firms, each with a specific mission. Overall, the goal of these various projects is to help ensure that no one who needs legal help is turned away because he or she cannot afford to pay. We recognize that we must increasingly get the most from every dollar, regardless of source, and that we can only continue to meet the legal needs of the indigent so long as maximum economic efficiency is achieved.

For these reasons, the situation which arose as a result of Congress' LSC-related reforms last year was one which, for Philadelphia's public interest legal community, really had only one answer. CLS, with its strong support from foundations and private individuals, would continue the work and programs that CLS funders intended to support. PLA, although a new and separate corporate entity, would continue to serve as Philadelphia's outlet for basic legal services as provided under the newly-reformed Legal Services Corporation. In this way, the indigent of Philadelphia continue to be served as efficiently, as economically, and as comprehensively as possible.

Many times during last year's budget negotiations members of our Association were told by federal lawmakers that the private bar would have to pitch in and make up the difference when federal budget cuts negatively affected the legal services appropriation. Here in Philadelphia, I am proud that our public interest community was able to pitch in to respond to the situation created by the LSC restrictions, and I am proud that we did so in such a way as to minimize the negative impact on the our indigent neighbors, the consumers of these legal services.

Thank you for your attention to this very important issue. Please feel free to call on us in the event we can be of further assistance.

Very truly yours,

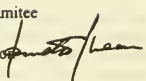


Francis P. Devine, III

# PHILADELPHIA BAR ASSOCIATION

## MEMORANDUM

TO: Honorable George Gekas, Chair, House Judiciary Committee  
Honorable Jack Reed, Ranking Member, House Judiciary Committee

FROM: Kenneth Shear, Executive Director, Philadelphia Bar Association 

DATE: June 26, 1996

RE: **PHILADELPHIA LEGAL ASSISTANCE**

---

I write to set out the facts surrounding the formation of Philadelphia Legal Assistance Center (PLA), a new legal services provider in Philadelphia, PA. I want to assure the members of your subcommittee that when members of the Philadelphia Bar Association established PLA, it was done so legitimately and appropriately with the sole goal of ensuring the continued access to justice for Philadelphia's neediest citizens. We are proud of the vital legal services PLA now provides consistent with the new federal restrictions.

In September of 1995, the Philadelphia Bar Association learned that the local legal services provider, Community Legal Services, Inc. (CLS), was considering turning down federal funding through the Legal Services Corporation for 1997 because of anticipated restrictions which would be attached to those funds.

In 1995, CLS received the majority of its funding from sources other than the Legal Services Corporation (LSC), including a grant from the Bar Association's own Foundation. CLS staff and Board members informed the Bar Association leadership that it feared the restrictions proposed by Congress would prohibit the organization from continuing to perform some of its important work, including work specifically funded by other sources.

For example, CLS received two foundation grants for specific projects to do outreach work to disabled children and nursing home residents with legal problems, and some of that work might be considered "solicitation" under the bills being considered by Congress. Similarly, it received a special IOLTA grant and foundation funds for advocacy on behalf of residents of

commercial boarding homes, some of which also might be considered "solicitation". In addition, CLS handled a large number of SSI disability cases under contract with the Commonwealth of Pennsylvania which had not previously been considered as "fee generating" but which were not excepted from the fee generating provisions of draft bills under Congressional consideration. Moreover, CLS relied on attorneys fees for some of its revenue, and collection fees would be prevented under the proposed legislation.

In view of the possible inability to continue to perform the requirements of existing grants and contracts, to continue to perform work the organization considered vital for its clients, and to collect certain revenues, the CLS Board and management began discussions in the fall on the possibility of no longer receiving LSC funding, and by early October 1995 had reached a tentative decision to that effect. In response to this development, leaders of the Bar Association joined with others in the legal community to form a new corporation which could apply for Legal Services Corporation money for Philadelphia's low income residents. It was recognized that continued receipt of federal legal services monies to provide assistance to Philadelphia's low income community was critical to assuring continued access to justice for the citizens of Philadelphia.

On October 17, 1995, articles of incorporation for the PLA were signed and promptly forwarded to the state for filing. A blue ribbon Board of attorneys and clients was appointed, none of whom served on the CLS Board, as we recognized the need for PLA and CLS to operate independently. The Philadelphia Bar Foundation awarded PLA a small grant so that a staff person could be hired to draft a proposal for federal funding, and that staff person was housed at the Bar Association offices.

When it was learned that PLA was the only applicant for LSC funds for Philadelphia, PLA proceeded with hiring. In the interest of continuing to provide high quality legal services without disruption or delay to the client community, PLA hired experienced legal services staff that CLS could no longer afford to employ and was laying off.

PLA does not share staff or management with CLS. It is a completely independent organization with its own mission, board, management, fiscal department, and space. PLA did decide to occupy offices in the same multi-floor downtown office building in which CLS is located. This decision was based in large part upon recognition of PLA leadership that with the LSC monies, it received the responsibility of continuing the financial support to the pro bono programs which are sponsored by the Bar Association and supported by the LSC grantee's funds through the Private Attorney Involvement program.

As there was vacant space on the floor of an office building occupied by the pro bono programs and an additional vacant floor in that building, PLA moved its operations on to two floors of the building, which now house not only PLA, but also the pro bono programs of Philadelphia Volunteers for the Indigent Program, the Homeless Advocacy Project, the Consumer Bankruptcy Project, and the Custody and Support Advocacy Clinic. Community Legal Services is located on separate floors of the building, with separate reception, waiting rooms, conference rooms, telephone system and computer systems.

Despite its independence from CLS, when PLA began operations in January of 1996, it took over responsibility for number of CLS cases which were not anticipated to be subject to federal restrictions. This was done in accordance with the LSC 1996 Request for Proposals and the PLA application for funds; the request required that applicant programs document how they would assure that services to clients were not disrupted by a change of recipient. Without this assistance from PLA, CLS, which had suffered a reduction of its budget by \$3.4 million as a result of the termination of federal funding and major staff reduction, would have been hard pressed to continue to handle all its existing cases.

Philadelphia Legal Assistance is presently seeing an average of 49 new clients on intake daily. These clients bring non-restricted matters such as family law matters, mortgage foreclosures, unemployment compensation, and individual public benefits problems to PLA. Additionally, PLA interviews clients who present miscellaneous matters for which clients usually need advice, brief service or referral to one of the pro bono projects with which PLA shares space. Once CLS made its decision to reject LSC funding, PLA became necessary to assure that these thousand of clients not lose access to the justice system and to advice and information that can save their homes, their incomes or assure their safety and that of their children.

Thank you.

KS:ns

# MASSACHUSETTS LEGAL ASSISTANCE CORPORATION

11 Beacon Street, Suite 820 - Boston, Massachusetts 02108-3009 - 617-367-8544 - Fax 617-367-8815

11 July 1996

The Honorable Jack Reed  
 Ranking Member, Subcommittee on  
 Commercial and Administrative Law  
 Judiciary Committee  
 House of Representatives  
 Congress of the United States  
 2138 Rayburn House Office Bldg.  
 Washington, DC 20515-6215

Re: Oversight Hearing on The Legal Services Corporation, 26 June 1996

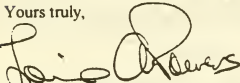
Dear Congressman Reed:

Thank you for informing me that certain statements were made regarding the Massachusetts Legal Assistance Corporation (MLAC) during this hearing and asking for a response to them. The statements made by one of the witnesses at this hearing, Professor Charles Rounds of Boston, Massachusetts, about MLAC were incorrect. I write as the Executive Director of MLAC to correct the record.

Professor Rounds stated in response to a question you posed that "The Massachusetts Legal Assistance Corporation, which does receive federal funds is basically coordinating this." MLAC has never in its 13 year history received one penny of Federal Legal Services Corporation funds. Since being created by state statute (M.G.L. c. 221A) in 1983, MLAC has received funding from The Commonwealth of Massachusetts, the Interest On Lawyers Trust Account program and, in a few instances, private foundations. Our annual audits are public information and detail all sources of revenue.

Thank you for the opportunity to clarify the record.

Yours truly,



Lonnie A. Powers  
 Executive Director

LAP:ice

Lonnie A. Powers, Esq. *Executive Director*

Robert G. Lian, Esq. *Chair* - Gene D. Dahmen, Esq. *Vice-Chair* - Michael G. Tracy, Esq. *Treasurer*  
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June 25, 1996

The Honorable George W. Gekas, Chair  
House Judiciary Committee  
Subcommittee on Commercial & Administrative Law  
United States House of Representatives  
Rayburn House Office Building #353  
Washington, D.C. 20515

Dear Representative Gekas:

It has come to my attention that your Subcommittee may be discussing Greater Boston Legal Services (GBLS) during your scheduled Oversight Hearing this week. The purpose of this letter is to provide you with information concerning recent changes in the funding and structure of GBLS.

GBLS began in 1900 as the Boston Legal Aid Society, and has a proud tradition of providing a full range of high quality legal services to low income people in the Greater Boston area. With the recent enactment of new restrictions on Legal Services Corporation grantees, GBLS approached the Boston Bar Association about how best to fully comply with the new federal requirements. Additionally, GBLS was concerned about other grants it had received, which it would no longer be able to accept under the new restrictions, and its ability to continue to actively represent certain individuals, including immigrants, due to the new restrictions and prohibitions.

To ensure total compliance with federal regulations and to assure provision of a full range of high quality legal services to the poor of Boston and its surrounding communities, the Board of GBLS decided to withdraw from LSC funding. The Boston Bar Association fully supported this decision. The Boston Bar Association also supported the application of the Volunteer Lawyers Project, an affiliate of the Boston Bar Association which has provided legal representation to low income citizens for the last twenty years, to apply for LSC funds to continue to provide this representation.

Please do not hesitate to contact me if you have any questions. Thank you for your consideration.

Sincerely,

Hugh R. Jones, Jr.  
President

**MEMORANDUM**

---

TO: To whom it may concern  
 FROM: Robert Sable, Executive Director  
 Greater Boston Legal Services, Inc.  
 DATE: June 26, 1996  
 RE: Testimony of Charles E. Rounds in Opposition to Federal  
 Funding for Legal Services

Despite being a law professor, in his written Testimony before the House Judiciary Committee, Charles E. Rounds fails to understand the role of lawyers, misstates the role of Greater Boston Legal Services, Inc. (GBLS) and mischaracterizes the relief that the clients of GBLS have sought before the Boston City Council.

1. "ongoing political initiative of Greater Boston Legal Services to have rent control reinstated"

Greater Boston Legal Services, Inc. represents a number of clients many of them elderly who have lived in their apartments for decades and face enormous rent increases as a result of the abolition of rent control. They asked us to represent them to protect them from evictions and rent increases they could not afford. This is not an initiative of GBLS but of our clients.

Professor Rounds has misstated and mischaracterized the actions which Greater Boston Legal Services has taken on behalf of eligible clients since the passage of a statewide referendum concerning rent control in the fall of 1994. On behalf of the Boston Tenant Coalition, which consists of the Massachusetts Tenants Organization, the East Boston Ecumenical Community Council, City Life/Vida Urbana, Mass. Senior Action Council and other groups, GBLS has drafted ordinances to protect tenants in certain condominium units from extreme rent increases and eviction without good cause, and to protect the City's rental housing stock from harmful depletion due to condominium conversion. Twice in the last seven months, the Boston City Council has enacted and the Mayor has signed such ordinances. The Chief Judge of the Boston Housing Court has ruled that the statewide referendum and the legislation which superseded it

## MEMORANDUM

Page 2

(Chapter 282 of the Acts of 1994) did not alter the City's legal authority to regulate condominium conversions and conversion-related rent increases and evictions. GBLS has represented tenant groups as intervenors in the lawsuits brought against the City of Boston by the Greater Boston Real Estate Board, and has so far been successful in this litigation.

An example of the individual tenants who are protected by these efforts of GBLS is Ms. B, a 77-year old widow whom GBLS has prevented from being evicted based in part on the ordinances. Ms. B has lived in her apartment which is now an investor owned condominium for over 20 years. Despite the fact that she has high blood pressure and is in poor health, and despite the fact that Ms. B has been an excellent tenant and paid rent timely every month since the time she moved in in 1975, she is facing eviction in the Boston Housing Court, because the Landlord is trying to get \$750 per month instead of her rent controlled rent of \$503 per month. Her income is only \$850 a month from social security and a small pension. Ms. B cannot afford this rent increase. She has no other place to go. Ms. B. is the kind of tenant who desperately needs the protection of Mayor Menino's and the Boston City Council's condominium ordinance and the representation of Greater Boston Legal Services.

The law to which Mr Rounds refers in note 15 of his prepared testimony is a wholly separate matter. It concerns rent regulation and good cause eviction protections in governmentally-involved housing--that is, multifamily units which have been subsidized by the federal or state governments, for which the rent and eviction protections which have been provided by federal and state law may end in the near future. Removal of restrictions on governmentally-involved housing was not contained in the statewide referendum ending rent control, but was only added in the superseding state legislation in an expedited process subject to minimum public scrutiny. There are thousands of such units in the City, and the City Council and the Mayor saw fit to enact this home rule petition drafted by GBLS at the request of the Boston HUD Tenants' Alliance. Again, Prof. Rounds' dispute appears to be with the City's elected officials.

Our clients believe they need some protections from rent increases and evictions. They may be wrong but it is their right in a democracy to petition their city council to take action which they believe will protect their interests. It is the role and duty of a lawyer to assist their clients in this case by advising our clients on legal means to obtain their goals and drafting language which would accomplish those ends.

## MEMORANDUM

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Professor Rounds correctly points out that we have withdrawn from federal funding. We did so because among other things the new federal restrictions would prohibit us from appearing before city council and government agencies in regard to ordinances and regulations. This work is a tiny fraction of our day to day activities which involve representing individuals and families to solve their legal problems. But to assure compliance with these new federal requirements we have declined funding rather than leave some of our clients unrepresented.

Professor Rounds hates rent control. His quarrel is with the Mayor of the Boston, the Boston City Council, the majority of Boston voters who opposed the state referendum, and with our clients. It is not with the lawyers for the poor.

## 2. Affiliation with Volunteer Lawyers Project

The Volunteer Lawyers Project (VLP) has received the federal LSC funding for the Greater Boston Area. The Committee should be aware that VLP, an public service project of the Boston Bar Association is a separately incorporated non-profit corporation with a separate Board of Directors and separate staff. It has been functioning for more than fifteen years. Please see the letter of June 25, 1996 to Chairman Gekas from Hugh R. Jones, President of the Boston Bar Association.

# EQUAL JUSTICE COALITION

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June 25, 1996

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Hon. George Gekas

Hon. Jack Reed

Sub-Committee on Commercial and Administrative Law  
House Judiciary Committee  
B-353 Rayburn House Office Bld.  
Washington, DC 20005-0515

Dear Rep. Gekas and Rep. Reed:

We are writing to you regarding the restructuring of legal services programs in Washington State in our capacity as present and past chairs of the Washington State Access to Justice Board and the Equal Justice Coalition. The Access to Justice Board, which was established by our Supreme Court in 1993, was given the specific responsibility for responding to the effects of drastic cuts in funding for the Legal Services Corporation last year. Given the very open and public process through which the Access to Justice Board fulfilled its mandate, we were very surprised to learn of recent criticism of our efforts. We are rightfully proud of the response of the Washington State legal community and the plan that was developed and implemented this year. We are certain you will agree once you have all of the facts.

We should begin by telling you what legal services has been in this state for a long time: a model public-private partnership comprised of federal, state, and private partners, working to ensure access to the legal system for 80,000 low income Washington State citizens each year. The vast bulk of those efforts are directed to everyday problems of the poor -- debt relief, illegal evictions, and domestic violence. Our federally and state funded programs worked closely with state and local bar association pro bono programs to provide the most access possible to our civil legal system for low income people.

Our bar leadership decided that a plan had to be developed to respond to the 33% loss in federal funding, and delegated the task to the Access to Justice Board. The Access to Justice Board, which is administered by the Washington State Bar Association and appointed by the Supreme Court, began the process by inviting 160 people and entities to participate. The group included judges, prosecutors, law schools, pro bono programs, civic leaders and other service providers.

Prior to the restructuring, there were three legal services programs in the state which received federal funding: Evergreen Legal Services, Spokane Legal Services Center, and Puget Sound Legal Assistance Foundation. Those three entities worked closely with 23 volunteer attorney programs around the state, and were the main contact point for low income clients seeking access to our judicial system. The reduced funding,

combined with new regulations which conflicted with state and local priorities, created the need to revisit the structure of the entire delivery system.

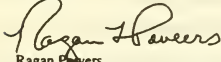
Based on the hard work and input of hundreds of community members, the ATJ Board developed a series of recommendations. One of the principal recommendations was to consolidate the three existing legal services programs into one statewide program funded with state and local dollars. A second recommendation was to create a new entity which could competitively bid for the limited LSC money available. A third recommendation was to seek further efficiencies through the use of technology, and improved cooperation between volunteer program and legal services programs.

The ATJ's recommendations went into effect in January of this year. Evergreen, Spokane and Puget Sound were merged to form Columbia Legal Services. Columbia did not bid for any federal funds in 1996, and relies solely on state and local funding. The Northwest Justice Project was formed and successfully bid for the 1996 grant from LSC. It has been in full compliance with all federal restrictions since January 1, 1996, even though compliance in some areas is not required by law until August 1, 1996. Columbia and Northwest Justice are entirely separate organizations. They have separate offices and boards of directors and there is no overlapping of staff whatsoever.

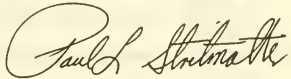
The successful effort of the Access to Justice Board has earned the support of Washington State Supreme Court Justices, the Washington State Bar Association, and the members of the Equal Justice Coalition. As you will notice, the Equal Justice Coalition is a bi-partisan group of individuals and community groups. It includes judges, mayors, police chiefs and hospital administrators, all of whom can attest to the important role of legal services programs in ensuring the effective operation of our judicial system. The Access to Justice Board's plan has their support because it is an intelligent and responsible restructuring which will ensure that low income citizens continue to have access to our civil justice system.

We want to thank you for reviewing this letter. Any of the three of us would be more than happy to respond to any questions you may have.

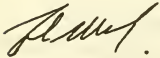
Sincerely,



Ragan Powers  
Chair of the Equal Justice Coalition



Paul Stritmatter  
ATJ Board Chair



John McKay  
LAW Fund Board  
Past Chair of the Equal Justice Coalition



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## Statement of James E. Towery President of the State Bar of California

I am James E. Towery, President of the State Bar of California. This statement responds to a statement submitted by Allyson Tucker, a California attorney, to the Subcommittee on Commercial and Administrative Law of the House Committee on the Judiciary at its hearing on June 26, 1996.

Ms. Tucker asserts that:

"If the [Legal Services Corporation] were abolished tomorrow, the poor would still have literally hundreds of places to turn for legal advice and assistance. In fact, pro bono legal assistance in this country is so widespread that many lawyers who wish to donate their time actually have difficulty finding needy clients."

This statement suggests the conclusion that private attorneys doing pro bono work could replace the work now done by lawyers employed by the legal aid programs that receive grants from the Legal Services Corporation. There is no basis in fact for this conclusion.

Pro bono work by private lawyers for low income clients has grown over the past twenty years and there are, indeed, literally hundreds of organized pro bono programs in the United States. But the number of matters handled each year by staffed

legal aid programs that receive Legal Services Corporation grants is in the hundreds of thousands in California alone, and in the millions nationwide. The capacity of private pro bono lawyers to take on additional clients could not, in the foreseeable future, come close to filling the void that would be created by abolition of the Legal Services Corporation.

What is more, the growth of pro bono programs has occurred, in substantial part, *because* of the legal aid programs' existence and support for the work of private, pro bono lawyers. The Legal Services Corporation has required every one of its recipients for over more than ten years to devote 12.5% of their grants to working with private attorneys. Many Legal Services Corporation grant recipients run their own pro bono programs. In addition, many pro bono programs that do not receive direct LSC grants do receive subgrants from LSC recipients. In 1994-95, fourteen pro bono programs in California were LSC subgrantees. As a result of these long-term investments by LSC grantees in pro bono work, it is *through* the legal aid programs and the pro bono programs they support that many private attorneys are able to connect with low income clients who need legal help.

Indeed, when Ms. Tucker describes private attorneys who have difficulty finding low income clients to assist, she is no doubt referring to lawyers who have not yet connected with a good pro bono program. For this reason, if the Legal Services Corporation were abolished, the difficulties of connecting private lawyers with needy clients probably would increase dramatically. While Ms. Tucker suggests that pro bono work by private lawyers would fill the void left if LSC were abolished, the more likely result of the elimination of LSC would be a reduction of pro bono work actually

available to the poor. Without LSC grants for legal aid offices and pro bono programs to coordinate pro bono work, there would probably be more private lawyers in the regrettable position of having difficulty finding low income clients to assist.

In many rural areas, especially, the progress that has been made in increasing pro bono work depends almost exclusively on the same legal aid programs and pro bono programs whose existence would be threatened if the Legal Services Corporation were abolished. Rural areas have fewer private attorneys to begin with, and their firms and law practices tend to be smaller than in urban centers. For these reasons, private lawyers in rural areas may not be able to take on as many or as demanding pro bono matters as private lawyers in urban centers can handle. This difference in capacity is compounded by the fact that in a number of counties in California, the only pro bono program that exists is run by the LSC-recipient legal aid program. The same is true, I understand, in most other states.

Ms. Tucker's comments ignore the special needs of rural areas, and seem to assume that a willing pro bono lawyer in downtown Los Angeles can provide meaningful legal help to a family facing emergency eviction proceedings in a rural county hundreds of miles away. It simply is not true.

In fact, there are not enough pro bono lawyers in Los Angeles to meet the needs of that city's low income residents. Ms. Tucker refers to the 2,000 private lawyers who helped 7,000 clients through Public Counsel in Los Angeles. But the Legal Aid Foundation of Los Angeles helped over 32,000 clients last year. And there are 1.8 million people in Los Angeles whose

incomes are below the eligibility limit for legal aid. Many of those people have serious legal problems that are not now being addressed. Public Counsel, LAFLA, and other agencies that provide legal help to poor people all agree that the need in Los Angeles far outstrips the resources of pro bono and staff programs combined.

Ms. Tucker uses other examples from California, including several of the accomplishments of the State Bar of California. The conclusions she draws from these examples are not well-founded. For example, she cites a \$3 million increase this year in grants from interest on lawyers trust accounts. What she does not report is that the increase—which is less than \$3 million, and results largely from interest rate variations—still leaves our total grants \$13.4 million below their high point in 1992-93 ( a decline of more than 50% during the same period as the drastic federal funding cuts). There is, unfortunately, no upward trend in funding through this program. Even more significant, the \$2.7 million increase falls far short of replacing the \$17 million in reductions to LSC grants in California for this year. There is no possibility that Interest On Lawyers' Trust Account programs can make up the shortfall if the Legal Services Corporation is eliminated.

Ms. Tucker cites clinics established in courthouses to assist low income clients with domestic violence, family law, and unlawful detainer problems. These are valuable projects, but they by no means establish that LSC-funded programs are dispensable. Many of these clinics in California have been created by, or with the active sponsorship of, legal aid programs that depend on LSC grants for their continued existence.

The State Bar of California is working with our Judicial Council to encourage special accommodations in our courts for pro bono lawyers, and our Chief Justice issued a statement of support in May 1996. These efforts are in the early stages and, while we are hopeful, we know of no more than a handful of courts that have implemented these measures.

Ms. Tucker cites the State Bar of California's Emeritus Attorneys program, which allows retired members to practice on a pro bono basis without paying dues to the State Bar. We believe this program is a valuable model, but it involves only 70 attorneys in the State so far.

Finally, the State Bar of California's 1991 survey of lawyers cited in the conclusion of Ms. Tucker's statement did not show, as she reports, that 64% of all practicing attorneys in the state do pro bono work. To the contrary, 64% of California lawyers reported in the survey that they engaged in "uncompensated law-related activity," which included a wide range of activity other than pro bono work for the poor. The State Bar's survey does not support the conclusion that as many as 40% of all active private lawyers do pro bono work for the poor.

To obtain a meaningful measure of how low income people cope with serious legal problems, in 1993 the American Bar Association conducted an in-depth survey of 1782 low income households. This Comprehensive Legal Needs Study demonstrated that 79% of low income households with a civil legal problem did not get help from any lawyer. Legal services lawyers assisted 5% of the low income households with a legal problem. Private lawyers provided services (other than a free initial consultation) without

charge to 3% of those low income households who had a legal problem, according to the CLNS. (Of the additional 2% who spoke with a private lawyer in a free initial consultation, the data suggest that the private lawyers referred 40% to legal services programs.)

What is clear, above all, is that most poor families cannot find any legal help today. They need more help of all kinds, not less. For all Americans, the promise of equality before the law is fundamental. But to keep that promise, we must do more, not less. Fair laws and a fair court system cannot deliver true equality before the law if people cannot invoke the laws designed to protect them.

Lawyers deserve to take pride in the progress of pro bono work during the past 20 years. The State Bar of California believes that pro bono work by private lawyers should continue to increase, and we are working hard to do so. But the idea that pro bono work can take the place of the Legal Services Corporation is a false hope that neither low income clients nor the Members of Congress who will decide LSC's fate have any reason to accept.

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\* Partner/Representative

STATEMENT OF STEVEN A. NISSEN  
EXECUTIVE DIRECTOR AND GENERAL COUNSEL  
OF PUBLIC COUNSEL  
JULY 15, 1996

I am Steven A. Nissen, the Executive Director and General Counsel of Public Counsel, the public interest law firm of the Los Angeles County and Beverly Hills Bar Associations. I am submitting this statement in response to the Testimony of Allyson Tucker of the Individual Rights Foundation on June 26, 1996 before the Subcommittee on Commercial and Administrative Law of the House Judiciary Committee. Because Ms. Tucker chose to single out the success of Public Counsel as part of her argument that the federal Legal Services Corporation ("LSC") should be eliminated, we felt it particularly important that we respond to the Subcommittee.

Ms. Tucker claims that *pro bono* legal assistance can take the place of federally funded legal services programs in filling the need for counsel of our nation's poor and underrepresented. Ms. Tucker is repeating a statement we have heard often during the recent debates over the funding of the LSC. Ms. Tucker and those who believe as she does—that *pro bono* services by the private bar can replace LSC funded programs—are absolutely wrong.

As the nation's largest bar sponsored *pro bono* program, we at Public Counsel view ourselves and our volunteers as an important part of the system for delivery of legal services to the poor and underrepresented. We are not and will never be a replacement for federally funded legal services programs. Rather, as partners in the legal services system we recognize the critical importance of programs funded by the LSC in helping to achieve the goal of equal justice under law. What Ms. Tucker and others who seek to abolish the LSC fail to realize is that if that major pillar of the legal services delivery system is removed, other supplemental activities such as *pro bono* will be unable to support the crushing weight of the caseload which would result. Access to justice for our nation's poor and underrepresented will become a fiction.

STEVEN A. NISSEN  
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The Southern California Affiliate of The Lawyers' Committee for Civil Rights Under Law — A Nonprofit Tax-exempt Corporation

Statement of Steven A. Nissen

July 15, 1996

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While we are quite proud of our role in helping to facilitate the private bar's provision of *pro bono* legal services to Los Angeles County's poor and underrepresented, it is absurd to think that we could replace our local partners in the legal services community. It is true that the private bar has provided a commendable level of volunteer legal services to the poor and underrepresented. But even with the private bar's significant contributions of resources, the current legal services delivery system is so overburdened that approximately 75 % of the legal needs of the poor in California go unmet each year. The volume of cases the private bar would be forced to undertake following elimination of the LSC, to just maintain current levels of service, is far greater than what our experience tells us the private bar is able to accept. Indeed, today there are over 1.8 million people living below the poverty level in Los Angeles County who, according to American Bar Association projections, would collectively have some 1 million legal needs during a given year. The 40,000 or so active attorneys in our County would have to drop much of their practice simply to take on poverty client matters.

Moreover, Ms. Tucker's assumption that programs like Public Counsel have an unlimited capacity to funnel *pro bono* cases to volunteers is unwarranted. The volume of cases we presently handle at Public Counsel, either through placement with volunteers or through direct representation by our staff attorneys, already creates a tremendous burden for us. We constantly struggle to meet the demands of case screening, volunteer training and mentoring services necessary to effectively place *pro bono* cases with the private bar. On top of that are the burdens caused by the increasing number of clients we represent directly-- a service we provide largely because we cannot find sufficient numbers of *pro bono* volunteers to represent all our clients.

Additionally, because of last year's reduction in LSC's budget and the restrictions which accompanied that funding, we have already seen a significant increase in the demand for our services. This is so because reduction in LSC funding to date has reduced legal aid staffs, forcing clients directly to seek out other already overburdened programs like ours. The ultimate irony is that this situation actually results in less *pro bono* work being accomplished, since our own program's staff is diverted from placing cases with volunteers and instead is inundated with direct intake and service requests due to the loss of intake resources at neighborhood legal aid offices.

Elimination of federally funded legal services programs would put a demand on our program far beyond that to which we could competently and professionally respond. The end result is that thousands upon thousands of poor and underrepresented Los Angeles County residents would receive no counsel at all. This scenario is not unique to Los Angeles--abolishment of the LSC will result in similar breakdowns in the legal services delivery system in communities around the country. The damage will be even more severely felt in rural communities where often the federally funded legal services program is the only available source of free legal services for the poor.

Statement of Steven A. Nissen

July 15, 1996

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Chiseled into the frieze above the entry of the U.S. Supreme Court for every schoolchild, tourist, attorney and elected official to see are the words "equal justice under law." This fundamental notion in the firmament of the nation's core precepts is not, as the moderate Justice Lewis Powell observed, merely "a caption on the facade" of a building. "Justice should be the same," he wrote, "in substance and availability, without regard to economic status." That lofty ideal will become mere words on a facade if one of the cornerstones of the legal services delivery system--federally funded legal service programs--is eliminated.



**Connecticut Bar Association**

The Honorable George Gekas  
The Honorable Jack Reed  
Commercial and Administrative Law  
Subcommittee of the House Judiciary Committee  
B-353 Rayburn House Office Building  
Washington, D.C. 25105

Re: Legal Services

Dear Representatives Gekas & Reed and Members of the Subcommittee:

I am writing this letter as the President of the Connecticut Bar Association. It was during my term of office that there was a statewide planning process that led to the development of a new and separate corporation called Statewide Legal Services. Connecticut's planning goal was to develop an integrated delivery system and was in response to the program letters and communications received from the Legal Services Corporation. The Connecticut Bar Association (CBA) endorsed the process and individual members of the bar were actively involved, as were representatives from the three Connecticut law schools, the Connecticut Bar Foundation, and the former LSC grantees, among others. It was as a result of that statewide process that the boards of the former Legal Services Corporation (LSC) grantees decided not to apply for the LSC funding, and the new corporation was created.

The three bar members who were the first board members and incorporators of Statewide Legal Services (SLS) were Steven Middlebrook, former general counsel of Aetna Life and Casualty and partner at Day, Berry and Howard, Gordun Buck, partner at Robinson and Cole, and Susan Wolfson, former President of the CBA and partner at Susman, Duffy and Segaloff. The current attorney board members are appointed by the Connecticut Bar Association, the George Crawford Society and the Hispanic Bar Association. There are no board members of SLS who are board members of the other legal services programs in Connecticut.

SLS is located in Middletown, Connecticut at a separate facility from the other providers of legal services to poor people. None of its employees are employed by any other legal services program. The functions of SLS are to provide intake, advice and brief service to poor people throughout the state via an 800 number. It also acts as a referral source to other providers of legal assistance, including legal services programs, law school clinics and pro bono attorneys.

Please let me know if you need any further information

Very truly yours,

Brian T. Mahon

**1995-1996 Officers**

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June 25, 1996

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Marianne Mahon  
Linda A. Gossard

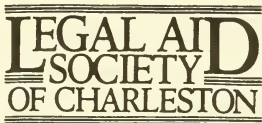
**Public Service Manager:**  
Marianne Mahon  
Linda A. Gossard



## ADDENDUM

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THE FOLLOWING ADDENDUM CONSISTS OF MATERIAL SUBMITTED FOR THE RECORD FOR THE JUNE 15, 1995, HEARING REGARDING THE REAUTHORIZATION OF THE LEGAL SERVICES CORPORATION



922 Quarrier St., Fourth Floor Charleston, WV 25301  
(304) 343-4481 FAX (304) 345-5934  
Toll Free WV 1-800-834-0598

August 7, 1995

Hon. Jack Reed  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Congressman Reed:

On June 15th Ms. Zelma Boggess submitted written testimony to the House Judiciary Subcommittee on Commercial and Administrative Law, chaired by Rep. Gekas of Pennsylvania, regarding the Legal Aid Society of Charleston (WV).

We believe her testimony contained misleading and erroneous allegations. Enclosed is a copy of a letter we have provided to Alex Forger, President of the Legal Services Corporation responding to Ms. Boggess' testimony about our program.

Sincerely,

*P. Nathan Bowles*

P. Nathan Bowles  
President, LASC Board of Directors

*Bruce G. Perrone*

Bruce G. Perrone  
Acting Director

**LEGAL AID  
SOCIETY  
OF CHARLESTON**

922 Quarrier St., Fourth Floor Charleston, WV 25301  
(304) 343-4481 FAX (304) 345-5934  
Toll Free WV 1-800-834-0598

August 4, 1995

Mr. Alex Forger, President  
Legal Services Corporation  
750 First Street, N.E.  
11th Floor  
Washington, DC 20002-4250

RE: Response to Testimony Regarding the  
Legal Aid Society of Charleston, WV

Dear President Forger:

On June 15, 1995 Ms. Zelma Boggess submitted written testimony to the House Judiciary Subcommittee on Commercial and Administrative Law, chaired by Rep. Gekas of Pennsylvania, regarding the Legal Aid Society of Charleston, WV. We believe her testimony contained misleading and erroneous allegations, and would like to respond.

I. Evictions Based on Actions  
of Guest or Household Members

Ms. Boggess asserts that LASC "takes the position that the Charleston Housing Authority should not evict residents for actions which are committed by either their guests or members of their household...." (Page 3.)

LASC has never asserted such a blanket position. In appropriate factual cases, following well-established law, the Legal Aid Society has represented residents asking the Housing Authority to refrain from evicting them for acts of others over which the tenant had no knowledge or control. The courts have many times stated that housing

August 4, 1995

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authorities should exercise discretion to refrain from evicting tenants for the actions of those over whom the tenant had no control or of which the tenant had no knowledge. (Citations to extensive legal authority for this discretion are set forth in Attachment 1 to this response.)

Congress itself has acknowledged "that each case will be judged on its individual merits and will require the wise exercise of humane judgment by the [public housing agency] and the eviction court," and that "eviction would not be the appropriate course if the tenant had no knowledge of the criminal activities of his/her guests or had taken reasonable steps under the circumstances to prevent the activity." S.Rep. No. 316, 101 Cong., 2nd Sess. 179 (June 8, 1990).

## II. LASC Challenges Housing Authority Ability To Provide Proof

Ms. Boggess states that "the Legal Aid Society frequently challenges our ability to prove that illegal activity did in fact occur," and seems to imply, in effect, 'trust us - we are the government, we know who is doing bad things, and we should not be required to present proof of it.' See pages 3-4 of her testimony.

But Ms. Boggess' own testimony contains a perfect example of why we must sometimes contest in court mistaken allegations of criminal activity. Instead of first investigating a charge that a resident or her guest shot a gun indoors, the Housing Authority filed a suit to evict the tenant because of "information received" (page 6) to that effect. LASC was required to show in pre-trial discovery initiated by the Housing Authority what the police and others already knew: that a violent former boyfriend, against whom the tenant previously had filed a domestic violence protective petition, had fired the gun in a parking lot after being told by the tenant not to enter her premises. The Legal Aid Society is aware of other evictions which have been filed by the Charleston Housing Authority based on criminal charges against the resident, when those charges already had been dismissed as mistaken by the time the eviction action was filed.

Despite Ms. Boggess' assertions that residents and Congress should simply believe any allegation made by the Housing Authority, in appropriate cases the Legal Aid Society does represent tenants and does insist that proof be presented to justify throwing families out of their homes.

## III. Attorney's Fees Paid to LASC

Over the past two-and-a-half year (1993, 1994, and so far in 1995) the Legal Aid Society of Charleston has received a total of two attorney's fee awards from the

August 4, 1995

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Charleston Housing Authority, in the combined amount of \$2,270. Both were agreed to by the Housing Authority as part of case settlements:

- > The first award (\$2,000, paid by the Authority's insurer) arose from a case in which the Housing Authority destroyed property of a tenant.
- > The second (in the amount of \$270) came from a case in which the Housing Authority refused to provide the required administrative hearing after a tenant filed a grievance.

#### IV. Sanctions Request in Domestic Violence Shooting Case

In the case discussed in §II above, the Housing Authority filed suit admittedly without knowing the factual basis of the case; apparently refused to investigate corroborating records after the LASC attorney told the Housing Authority the actual facts of the case; insisted on obtaining a sworn deposition from the tenant; and turned out to be terribly wrong in seeking the eviction.

LASC did request payment of its attorney fees, of \$500. This case was only one of several in a short time period in which the Housing Authority had filed litigation without reasonable attempt to determine the facts, then dismissed the cases once it learned what it had not bothered to find beforehand. LASC believed those cases demonstrated a pattern of inappropriate litigation and were appropriate for Rule 11 sanctions, even under West Virginia's standard that "frivolity alone" is not sufficient.<sup>1</sup> Ultimately, though, the LASC motions for sanctions were denied and the Housing Authority's cases were simply dismissed.

#### V. Freedom of Information Act Requests

Ms. Boggess complained of "frequent" FOIA requests, and asserted "I have received as many as five or six of these requests in one week." (Page 7).

The Legal Aid Society of Charleston has filed six FOIA requests with the Charleston Housing Authority in the three-plus years that Zelma Boggess has been director. In general, the FOIA requests were made pursuant to LASC's professional ethical obligation to ascertain a reasonable basis in fact before filing litigation on behalf of clients alleging that the Housing Authority had failed to take actions required by law.

Attached are two newspaper articles, not involving LASC, which may suggest that

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<sup>1</sup> Daily Gazette Company v. Canada, 332 S.E.2d 262, 266 (WV 1985).

August 4, 1995

Page 4

Ms. Boggess has a pervasive disinclination to follow the spirit of the Freedom of Information Acts. (Attachments 2 and 3)

VI. LASC "Disservice to  
the Individual Being Represented"

The Charleston Housing Authority director prefaced her testimony by stating her belief that actions by LASC "result in a disservice to the individual being represented..." (page 2), and elsewhere voices her feeling that "the Legal Aid Society does not choose to get involved with representing residents who have never been charged with a crime...." (Page 4).

In fact, the Legal Aid Society of Charleston has long represented active tenant organizations, and enjoys their strong support. See the support letters enclosed, written well before Ms. Boggess' appearance in Congress. (Attachments 4 and 5.)

The Orchard Manor Resident Management Corporation (OMRMC) in particular is a very pro-active and credible tenant group. OMRMC has been extremely forceful in addressing security issues in its complex, demanding installation of a security gate to control access to their premises. OMRMC now holds the contract with the Charleston Housing Authority to staff the security gate. OMRMC now is applying to become the first resident management group in the country to be certified as a Community Housing Development Organization, to help low-income families with good credit buy homes. (See Attachment 6). The president of the Orchard Manor Resident Management Corporation said in her letter that she believes responsibility for problems lies with the Housing Authority, not with the Legal Aid Society of Charleston.

Conclusion

Thank you for the opportunity to provide this response. Should you want more information please feel free to contact us.

Sincerely,

*P. Nathan Bowles*

P. Nathan Bowles  
Board President

*Bruce G. Perrone*

Bruce G. Perrone  
Acting Director

cc: Honorable George W. Gekas Honorable Henry J. Hyde Honorable Bob Inglis Honorable Steve Chabot Honorable Michael P. Flanagan Honorable Bob Barr Honorable Jack Reed	Honorable John Bryant Honorable Jerrold Nadler Honorable Robert C. Scott Honorable Alan Mollohan Honorable John Conyers Honorable Bob Wise
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LEGAL AID SOCIETY OF CHARLESTON  
 Response to Testimony of Zelma Boggess  
 Attachment 1

Existing Legal Authority That Housing Authorities Should Exercise Discretion To Refrain From Evicting Tenants For the Actions Of Those Over Whom The Tenant Had No Control Or Of Which The Tenant Had No Knowledge:

Tyson v. New York City Housing Authority, 369 F.Supp. 513 (S.D.N.Y. 1974);

Jones v. Christian, 120 A.D.2d 367, 501 N.Y.S.2d 854 (N.Y.App.Div. 1986);

Spence v. Gormley, 387 Mass. 258, 439 N.E.2d 741, 745 (1982);

Maxton Housing Authority v. McLean, 313 N.C. 277, 328 S.E.2d 290, 293 (1985);

Housing Authority of Decatur v. Brown, 180 Ga.App. 483, 349 S.E.2d 501 (1986);

Henry v. Wild Pines Apt., 183 Ga.App. 491, 359 S.E.2d 237 (1987);

Matter of Hines v. New York City Housing Authority, 67 A.D.2d 1000, 413 N.Y.S.2d 733 (N.Y.App.Div. 1979);

Matter of Edwards v. Christian, 61 A.D.2d 1045, 403 N.Y.S.2d 119 (N.Y.App.Div. 1978);

Baldwin v. New York City Housing Authority, 65 A.D.2d 546, 408 N.Y.S.2d 948 (N.Y.App.Div. 1978);

Chicago Housing Authority v. Rose, 203 Ill.App.3d 208, 560 N.E.2d 1131 (1st Dist., 1990);

Mid-Northern Management, Inc. v. Heinzeroth, 234 Ill.App.3d 240, 599 N.E.2d 568 (2nd Dist. 1992);

Housing Authority of Decatur v. Brown, 180 Ga.App. 483, 349 S.E.2d 501 (1986);

Moundsville Housing Authority v. Porter, 370 S.E.2d 341 (W.Va. 1988);

Hodess v. Bonefont, 401 Mass. 693, 519 N.E.2d 258 (1988);

Matter of Edwards v. Christian, 61 A.D.2d 1045, 403 N.Y.S.2d 119 (N.Y.App.Div. 1978).

Charleston Daily Mail, Monday, June 26, 1995 Page 1

# Mayor won't sign grant applications

■ Melton says housing agency must fix communications

By SARAH WEBSTER  
DAILY MAIL STAFF

Charleston Mayor Kemp Melton will not give the Charleston Housing Authority recommendations for grants until the agency works out alleged communication problems with its residents and the city.

Melton's decision was prompted after receiving complaints from more than 250 residents who live in the city's housing projects, said Ron Gregory, assistant to the mayor.

Charleston Housing Authority manages Washington Manor, Orchard Manor, Littlepage Terrace, Hillcrest Village, Oak



MELTON MELTON BOGGESS

hurst Village and South Park Village.

City residents and the mayor's office allegedly have had difficulties getting public information from the agency and setting up meetings with its officials.

"They feel as though they get no response or that they can never talk to them," Gregory said.

Melton had decided to take a hard line with the agency's executive director, Zelma Boggett.

"I told her this administration's policy," Melton said. "We intend to be totally open and available."

■ Turn to HOUSING/11A

# Housing

■ Continued from 1A

In a statement issued Friday, Boggess cited various letters and one meeting with the mayor as proof that communication lines are open.

"I don't know why the mayor is escalating this issue of the Housing Authority," she said. "I have tried to communicate. . . . My intent is honorable."

She said the mayor has refused to sign two important grant applications:

■ A \$1 million application for family investment centers, which "would have assisted residents to achieve self-sufficiency and improve their economic status." The deadline for that application has now passed, she said.

■ A \$2.8 million comprehensive grant application for physical housing improvements.

Gregory said Melton is using the city's endorsement to get concerns of residents and city officials addressed and is not trying to punish residents.

"If that means we delay letters

of endorsement, than that's what we'll do," Gregory said. "He wants it (the agency) to serve the citizens of Charleston."

Determining whether the housing authority is a federal, state or city agency appears to be the biggest problem in getting answers. Melton has conceded it is a "gray area."

State law gives cities the authority to create a housing authority. The Charleston Housing Authority was created by the city in the 1930s, and Boggess said it is 100 percent federally funded.

It is governed by a five-member board of mayoral appointments who serve staggered terms and select the agency's director. But Boggess said the mayor's influence into the agency's workings was meant to be minimal.

"We were set up in that manner to be protected from the winds of political change," Boggess said. "I don't think the mayor has a feeling yet of how we fit in with the city. He's new and has a lot to pick up on."

But Melton believes the public

needs his help in getting the agency to open up.

For example, one city resident received a letter from the authority saying if he wanted the information he was seeking he would have to pay \$101.37 to view it for 30 minutes. Melton's office considers that charge excessive.

Norman Kilpatrick, who is a former city official, has been battling the agency for more than six months over the matter.

"The stuff you normally get from any other agency, they don't give you," he said.

Boggess said the charge for viewing the information Kilpatrick wanted to see was for putting it into the form he requested. But according to copies of the requests, he did not request the information be put into any specific format.

The housing authority also has refused to provide information to the city.

According to a memo provided by the mayor's office, it appears that housing officials cited the Freedom of Information Act to

avoid turning some records over. "If you would like a copy of the budget . . . you must write a letter to Ms. Boggess requesting the information and your reason for wanting the information," an official wrote to a member of Melton's administration.

In addition, one board member has cited the Open Governmental Proceedings Act to avoid a meeting with the mayor. The law is to open up governmental actions to public scrutiny.

On June 15, the Rev. Aaron Hairston, a member of the board, sent a letter to the mayor stating they could not meet as Melton requested because it may violate the law. Hairston said they could meet at the board's regularly scheduled meeting.

Boggess said today that board members believe that the law requires them not to meet outside of their scheduled meeting.

The mayor has since rescheduled a meeting with the board for 1 p.m. Wednesday. He has said that any meeting with the board would be open to the public.

# City housing authority slow to provide information on payroll

By Rusty Marks  
STAFF WRITER

Mayor Kemp Melton got a list of employees of the Charleston Housing Authority late this week, but only after weeks of trying.

Melton has repeatedly asked housing director Zelma Boggett for payroll information. What he got was a budget and documents that list positions and salaries but give no names.

At a public meeting with Boggett and other housing staff Wednesday, Melton argued with Boggett and her assistants for several minutes over Boggett's payroll.

Housing staff said the documents they provided were the payroll.

"That's an expenditure list," Melton countered. "I want to know what Joe Jones makes. To me, that's payroll."

During the meeting, Melton again asked for a list of Boggett's employees and their salaries. He got the information on Thursday. Boggett's annual salary is \$80,612, according to figures provided.

Others have also reportedly had trouble getting payroll and other information from the housing authority.

Norman Kilpatrick, former director of the city's economic de-

velopment office, said he had trouble obtaining payroll information from Boggett.

Through a request under the state Freedom of Information Act, Kilpatrick first asked for housing authority salary information on Feb. 2. Boggett replied that she wanted to know if the information would be given to the press.

Boggett said Friday she wanted that information to determine the cost to the city of releasing the information. Typically, she charges \$5 cents a page for copies, plus employee time to look up the information, but usually does not charge for media requests.

Boggett then told Kilpatrick she

would need a legal opinion before releasing payroll information. On April 30, she wrote Kilpatrick that he could have the information — if he paid \$100 fee.

Boggett said Friday that it would have taken about \$750 in employee time to get the information, and that she would provide the list Boggett said it was necessary to remove tax withholding and other deductions.

"He asked for names and salaries, and that's what we tried to give him," Boggett said.

Kilpatrick said the \$100 fee was excessively high, adding that he never asked that deductions be removed. "There's no excuse for it,"

he said Friday.

Kilpatrick said he believes that Boggett imposed the high fee to discourage him from following through on his request.

"That's what's involved here," Kilpatrick said.

Former City Councilwoman Betty Lee Wampler also had had trouble getting information from Boggett. Although Wampler informed Boggett of her payroll information, she and former Councilman Steve Brown had to write a Freedom of Information Act request in order to get information about HUD-subsidized housing in town.

"They went to great pains to use a black marking pen to mark

out the rest; the people were paying," Wampler said. "It's like a black mark on there. You can't get through it."

Myra Ducan, former deputy director of the housing authority, said Boggett wouldn't even permit her to see the payroll.

"She didn't trust me," Ducan said.

Boggett said Ducan was allowed to see payroll documents.

Ducan was asked to resign in February, but said she wasn't told why. Boggett said Ducan was told.

"Any disgruntled ex-employee is going to have bad things to say," Boggett said.

## MANAGEMENT CORPORATION

Attachment 4

900 GRIFFIN DRIVE, CHARLESTON, WEST VIRGINIA 25312 TELEPHONE (304) 345-8768

May 12, 1995

Mr. Tony Sade, Attorney  
 Legal Aid Society Charleston  
 1033 Quarrier St. Suite 600  
 Charleston WV. 25301

To Whom it May Concern:

My name is Patricia Terwillinger I am the President of Orchard Manor Resident Management Corporation. Several times we have asked Tony Sade from the Legal Aid Society of Charleston to come to answer questions the tenants have about their rights. Mr. Sade always agrees to come and he has been very helpful to the tenants in answering these questions.

While we know drugs is a serious problem here in Public Housing in Charleston we donot believe for a minute that Mr. Sade has made the problem any worse. We do think that the local police and the Charleston Housing Authority have not taken the problem seriously enough. We have asked the Housing Authority to tighten up the screening of new tenants and to all the tenants to serve on the screening committee, but they are not listening to us.

We think that if the tenants help screen people applying to get an apartment in Public Housing, we could keep out a lot of Drug Dealers.

We know that some times Mr. Sade helps tenants when a whole family is getting evicted because one of the children has gotten involed with drugs. We understand why he does this and we donot think that this makes the drug problem any worse.

Sincerely,

*Patricia Terwillinger*  
 Patricia Terwillinger, President  
 Orchard Manor Resident  
 Management Corporation

Mrs. Katie Grant, President  
Charleston Housing Authority Resident Council  
610 Meredith Court Apt. 251  
Charleston, WV 25301

Re: Legal Aid Society Activities

"To Whom it may concern:"

As President of the Washington Manor Resident Advisory Council, I am writing to clarify the services received from staff attorney Tony Sage of the Charleston Legal Aid Society. In 1991 the Washington Manor Resident Advisory Council of the Charleston Housing Authority contracted Mr. Sage regarding the need for legal services. The Housing Authority prepared new leases for the residents that appeared questionable. Residents particularly the Senior Citizens were being evicted due to possible drug selling by younger family members such as their children or grandchildren. Mr. Sage was asked to seek clarification because the older residents were not involved and often was not aware of the allegations. He met with the residents and informed us of our rights and stated he would make further inquiries. He later informed us that the leases were enforceable because the lease had been approved by the Housing Authority.

We appreciated the attention he gave to us because although drugs were and is a problem to the residents of Washington Manor, many of us particularly the senior citizens are not apart of the problem and are very vulnerable. Mr. Sage acted on behalf of families that had been accused, that had not been involved in any drug sale. The management of the Housing Authority appears to be helping to stop drug activities in the project, but the way they are attempting to solve the problem has caused unfair treatment of senior residents. They are viewed as part of the problem instead of part of the solution. It is in this capacity that Mr. Sage has played an active role. His attention was much needed.

Sincerely,  
*Katie R. Grant*  
Mrs. Katie Grant, President

Charleston Daily Mail

--WEDNESDAY, AUGUST 2, 1995 5A

# Orchard Manor to form group

■ Residents want to help low-income families buy homes

By SARAH WEBSTER  
DAILY MAIL STAFF

Some Orchard Manor residents are expected to be the first subsidy-dependent group in the country to participate in a special housing program.

The Orchard Manor Resident Management Corp. has applied to the city of Charleston and the state of West Virginia for status as a Community Housing Development Organization, said Kirk Gray.

Gray is president of the Gray Group, a Maryland-based social investment firm that does consulting work for the Orchard Manor residents. The consultants are paid through the federal Tenant Opportunity Program.

The organization that tenants hope to form would be nonprofit and would use funds from the U.S. Department of Housing and Urban Development to help low-income families with good credit buy homes, said Tom Barton, director of the Charleston Housing Improvement Program.

Such agencies have been around since passage of the 1990 National Affordable Housing Act.

The legislation, which Gray called "the most dominant piece of housing legislation in the last 20 years," gave authorization for certain types of nonprofit groups to become development organizations.

There are about 1,000 such groups in the country. And Gray said there are already three in Charleston: The Charleston East Corp., Covenant Homes and Community Homes and Economic Development.

But if its status is approved, the Orchard Manor group will be different.

"What is so unique about this is that they are a subsidy-dependent corporation," Gray said. "They would be the first CHDO formed out of a resident management group."

"It's a real emancipation," he said. A news conference on the matter may be held by the end of the week in Washington, D.C., with Henry Cisneros, U.S. secretary of Housing and Urban Development, Gray said.

Pat Terwillinger is president of the Orchard Manor Resident Management Corp. She said the group was established about five years ago by disadvantaged residents of Orchard Manor, which is managed by the Charleston Housing Authority.

She said people who live in subsidized housing are ideal candidates to benefit from a development organization.

"I can see a person, maybe a single parent working at a fast food place, or two parents who are just making ends meet, who would qualify," Terwillinger said.

"I believe it will put them on their feet, and they will not have to rely on HUD for assistance."

Added Gray, "What's so neat about this is that the city is going to convey these properties and return these people to the tax rolls. You and I as taxpayers won't be feeling the bite."

Charmaine Wilson, vice president of the Gray Group, said nobody seemed to notice before how resident management corporations might use the special status. But now the Orchard Manor corporation can be a model for other resident management groups across the country.

Wilson said if the status is approved, a well of money could be-

come available to the Orchard Manor group. Gray said development organizations have access to a minimum of 15 percent of federal dollars allocated through the HOME Investment Partnerships program.

In 1995, the city received about \$475,000, and the state received about \$3 billion, he said.

Wilson said the Orchard Manor group is asking for \$150,000 from the city. The state application is

not due until Aug. 15, and the amount of that funding request has not yet been decided, she said.

Gray hopes the group can obtain enough funds to construct two to four new housing units a year. He was optimistic that the status would be approved.

"They will officially be designated a CHDO this week," Gray said confidently.

If so, the program could begin by the end of the year.

Response of Georgia Legal Services Program  
to Testimony of  
John Hiscox, Executive Director  
Macon (Georgia) Housing Authority  
Offered to the United States House of Representatives  
Committee on the Judiciary  
Subcommittee on Commercial and Administrative Law

September 29, 1995

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The testimony of John Hiscox would lead one to conclude that the Macon office of Georgia Legal Services Program has opposed the efforts of the Macon Housing Authority to rid the public housing neighborhoods of drugs. Nothing could be further from the truth. Our clients live in public housing, live in the neighborhoods around public housing, and are probably more affected by the drug situation than other residents of Macon. *See* Attachment A.

Although Mr. Hiscox makes references to "dozens of families" represented by GLSP attorneys, he presents no hard data to back that up, and our records indicate that over the period of years in question, 1989-1995, there were no more than ten. Those ten includes three that were voluntarily dismissed by the MHA when it concluded it could not establish legal grounds to pursue the eviction. *See e.g.*, Attachments B and C.

Over those years we handled over one thousand housing cases; therefore, less than 1% are at issue here. While it is impossible to determine how many public housing eviction cases we rejected due to lack of merit, our Macon staff attorneys report anecdotally that they were extremely careful about evaluating cases involving drug allegations because they are difficult to handle from a factual and legal perspective. Further, from a professional ethics standpoint, we are bound not to assert claims or defenses that are not tenable. Moreover, because they are controversial, we wanted to be certain that we had viable grounds to assert in defense of the eviction. Finally, as is true for all legal services programs, we have very limited resources, and none to "squander", as Mr. Hiscox charges, on long-shot cases.

We have attached our summaries of the six cases that Mr. Hiscox's attorney describes in the attachment to Mr. Hiscox's testimony. Significantly, not one of these individuals was even charged, much less convicted of drug dealing. Only one was even charged with any crime, that being possession. In that case, the District Attorney's office had "dead docketed" her case. After our appearance in the eviction case, the D.A.'s office changed its mind and decided to prosecute the case. The client, the mother of three children, pled guilty to the charge in exchange for a suspended sentence so she would not have to abandon her children, and then chose to move rather than fight the eviction. Most of the cases arose from tenancy terminations occurring months after the alleged drug incident. The cases involved significant and credible factual disputes.

GLSP Response to Testimony of John Hiscox  
 Subcommittee on Commercial and Administrative Law  
 Committee on the Judiciary  
 September 29, 1995

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Our summaries explain our positions in these cases and are responsive to Mr. Hiscox's complaints about our "defense tactics". For instance, although Mr. Hiscox complains about our defense based on the tenant's lack of control or knowledge, this was the very standard correctly articulated by the MHA attorney in evaluating grounds for eviction, because it is a well-established defense to an eviction under Georgia law. With regard to his complaint about our defense that the accused had not yet been convicted, as we stated earlier, it is our clients' position that possession of standard housing in Macon is so valuable that they want to stay in it if possible, and we are thus ethically obliged to raise every legally tenable defense. Our position on off-site criminal activity is that the MHA lease only governs conduct within the jurisdiction of the MHA. We did not take the position that the MHA could not evict individuals, or reject applicants, with a "recent drug-related criminal record," but rather that an individual charged with criminal activity which allegedly supports an eviction is entitled to have a neutral fact-finder determine whether the activity as alleged had in fact occurred.

Our representation of these clients did not violate any law, regulation, or policy. In 1990, the Legal Services Corporation board did adopt a resolution urging local boards to adopt policies concerning acceptance of drug-related evictions. This was reported by the GLSP Executive Director to the GLSP Board in September 1990, which also heard a report at that meeting from the GLSP Housing Attorney. The GLSP Board was satisfied with the organization's approach to these cases and declined to take further action. Interestingly, the local newspaper in Macon opined that the then-Legal Services Corporation board went too far in establishing that policy. See Attachment D, questioning a policy of guilt by association.

GLSP has always carefully and fully complied with the requirements of the LSC statute, regulations, policies, and grant conditions, and will continue to do so. A draft regulation governing drug-related evictions has recently been proposed, and when and if it becomes law, we will comply fully with its terms.

GLSP attorneys take seriously their professional responsibility to represent clients zealously within the parameters of the law, and conversely, not to assert frivolous or unfounded claims or defenses. We evaluate every case we accept carefully and each case is discussed at a full staff meeting, attended by junior and senior legal staff, before it is accepted. Sometimes additional information is sought prior to acceptance.

As is illustrated by the views of our former client, Annie Causey, in the *Macon Telegraph and News* article which is attached, our clients are supportive of the efforts of the MHA to rid the housing authority neighborhoods of drug activity. Occasionally, however, like all government agencies, the MHA makes an error or pursues this policy with a zeal that scoops up innocent

GLSP Response to Testimony of John Hiscox  
 Subcommittee on Commercial and Administrative Law  
 Committee on the Judiciary  
 September 29, 1995

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bystanders. Those are the instances, of legitimate disputes of fact or law, where we have attempted to intervene.

On behalf of our clients, and at the housing authority's request, we have written letters of support for many MHA proposals. We have agreed, at MHA's request, to provide legal services as part of a comprehensive social services delivery system which would have provided necessary services as a part of a proposal for additional housing for poor people. We serve on a task force working to improve the substandard housing problem in Macon, along with staff from the MHA; studies in our community have shown that substandard housing is a substantial factor in the prevalence of drug-related activity, and there is much substandard housing in the vicinity of public housing neighborhoods. We have had, for the most part, an excellent working relationship with the MHA, and many of our cases involving disputes between public housing management and the tenants are efficiently and effectively resolved with a phone call.

As Mr. Hiscox states, prior to the start of the MHA campaign to rid the public housing neighborhoods of drug activity, we did meet with him. He told our staff, "I expect you to hold our feet to the fire," meaning that when we differed over the facts of a case, he expected us to provide aggressive advocacy on behalf of the family. We are very surprised to see that he has so dramatically changed his views.

We would like to respond in further detail to several specific charges by Mr. Hiscox.

Mr. Hiscox assails our representation of these tenants as based on "poor judgment" and "rooted in political philosophy". Our judgment, and our philosophy, is that factual questions may not be unilaterally decided by one side to a dispute, but that under our system of justice, contested factual questions are for either a judge or a jury to decide. In the cases we accepted, our clients had credible factual differences and tenable legal defenses, based on established Georgia law, to the eviction proceedings. Our philosophy, our statutory charge, and our professional responsibility is to offer high quality legal services to low-income persons so as to "level the playing field." There are sanctions available to Georgia courts to discipline lawyers or their clients who assert frivolous factual or legal positions, and there are professional sanctions for lawyers who engage in such tactics. Significantly, attorneys for the MHA never sought any such sanctions. This kind of individual, case-specific control is far more suited to restraining allegedly improper lawyer conduct, as opposed to the blunderbuss approach he would urge the Congress to adopt.

Mr. Hiscox describes the "exorbitant" cost of these cases and suggests that we were/are the biggest cause of that expense. Of the 150 lease terminations for drug activity (out of 2,175

GLSP Response to Testimony of John Hiscox  
Subcommittee on Commercial and Administrative Law  
Committee on the Judiciary  
September 29, 1995

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apartments), we were involved in ten. The MHA retained a prestigious local law firm that declined our initial informal requests for information supporting the eviction effort, requiring us to engage in formal, and expensive, discovery to ascertain the facts which the MHA believed warranted lease termination. We are certainly not in a position to challenge the cost of his attorneys, but we believe these cases might have been handled more inexpensively from the outset had there been more cooperation either by Mr. Hiscox or his attorneys. Fortunately, they now share information with us informally which saves the time and expense of all concerned. As to their expenditures for lease revisions, policy overhaul, staff training, consultation with law enforcement, and so forth, it appears to us that that would be the normal cost of doing the business they are in, and of initiating a lawful eviction campaign directed at drug activity, and not anything related to GLSP staff attorneys' defense of tenants.

Contrary to his assertion that we had "teams of lawyers" handling these cases, initially we assigned an inexperienced lawyer teamed with his supervisor, as we often do. The later cases, handled by staff then more experienced with these cases, had only one GLSP lawyer. It is worth noting that MHA used more than one lawyer to handle these cases. See Attachment E.

A jury in the Civil Court of Bibb County is composed of six persons. Our view was that our clients are entitled to a jury trial if they want one. At most, this adds a day to the trial, and that did not happen in every case. In fact, not all the cases were jury trials.

Mr. Hiscox also wonders about other cases we might have handled if we had not been asked by these families to help them. His implication is that these cases were not worth the effort. In our priority-setting surveys, our clients in Macon have consistently ranked housing as their top priority critical legal need. In Macon, 22% of the housing is substandard. The percentage is much higher, of course, in poor neighborhoods. A public housing unit is a tremendous benefit to poor families trying to survive on a \$330 AFDC check per month for a family of four. We believe that if facts are in dispute, and the available evidence is inconclusive at best, then residents of public housing should be able to make their case in court to protect their right to reside in affordable housing that meets code standards.

In summary, our representation of the ten clients we accepted over a six year period was proper, consistent with appropriate professional judgment, and in line with the priority needs of our client community. Mr. Hiscox has exaggerated and mischaracterized what happened in these instances. By contrast, we have attached a letter from Mr. David Hudson, an attorney who represents the Housing Authority of the City of Augusta, Georgia, who is very supportive of legal

GLSP Response to Testimony of John Hiscox  
Subcommittee on Commercial and Administrative Law  
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September 29, 1995

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services attorneys' work. He states that the difficulty with respect to drug-related evictions rests with the decisions of trial and appellate courts, and not the lawyers who represent the tenants. *See* Attachment F.

Respectfully submitted,

A handwritten signature in cursive script, reading "Phyllis J. Holmen". The signature is written in dark ink and is positioned above the printed name.

Phyllis J. Holmen, Executive Director  
Georgia Legal Services Program

GLSP Response to Testimony of John Hiscox  
Subcommittee on Commercial and Administrative Law  
Committee on the Judiciary  
September 29, 1995

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Macon Housing Authority v. Tina Burke

Macon Housing Authority v. Annie Causey

Ms. Burke, the mother of four children, lived in Murphy Homes for eight years. On July 10, 1989, two men were arrested in the common area between apartment #2436B Street (Ms. Burke's apartment) and #2430 B Street (the home of Ms. Annie Causey). One man was arrested for possession of cocaine and the other arrested for loitering.

The Macon Housing Authority waited almost four months after this incident, until November 1, 1989, to give Ms. Burke notice that they were going to terminate her tenancy. Ms. Burke was never charged with any crime, nor was anyone on her lease charged with any crime. Mr. Hiscox states that "officers listened to and observed the sale of cocaine from the front yard of the residence." At his deposition, however, the police officer testified that they could not have observed where this sale took place because they were parked too far away.

The same incident resulted in the MHA also trying to evict the next door neighbor, Ms. Annie Causey, who was notified on December 8, 1989, that her lease was being terminated. We filed an answer for Ms. Causey to the MHA complaint which alleged that because her son, Frankie Causey, was arrested for loitering in the common area, she was a threat to the health and safety of the other tenants. When we moved for summary judgment, the MHA voluntarily dismissed the eviction proceedings, conceding that it was uncertain whether it could establish that Ms. Causey had any knowledge or control over Frankie at the time of the incident.

These were two of the first cases in which we were involved. The MHA's lawyer articulated a standard in the Causey case that the tenant must have "knowledge or control", which is in fact consistent with Georgia law.

Our position in defending Ms. Burke was in accordance with that standard. That is, did she have knowledge of, or control over, the person who was arrested for the criminal activity? We believe that Ms. Burke was entitled to have a judge or a jury decide those issues.

Contrary to Mr. Hiscox's assertion in the Tina Burke case, our position was not that our client had not violated the lease because she was not in possession of crack or cash at the time of the incident.

GLSP Response to Testimony of John Hiscox  
Subcommittee on Commercial and Administrative Law  
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September 29, 1995

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Macon Housing Authority v. Tabitha Whitehead

The facts of this case were not as clear as Mr. Hiscox's description would indicate.

On August 31, 1989, Mr. Tony McGowan, the father of Ms. Whitehead's youngest child, was arrested for possession of cocaine. The drugs were found outside the apartment on the ledge of a window that was near the backyard and a corner of the building. According to the reports, a group of men ran around the back of the apartment (between two of the project buildings) when the police raced up to make the bust.

The District Attorney's office later decided to *nolle prosequi* the drug possession case against Mr. McGowan. However, on that same day, a criminal trespass warrant was executed on Mr. McGowan at Ms. Whitehead's apartment. Mr. McGowan had in fact voluntarily signed an agreement to stay off MHA property, and on that day he was babysitting for his child while Ms. Whitehead was at work.

On November 10, 1989, more than two months after the alleged drug deal, the MHA notified Ms. Whitehead that her lease would be terminated on December 10, 1989.

GLSP Response to Testimony of John Hiscox  
Subcommittee on Commercial and Administrative Law  
Committee on the Judiciary  
September 29, 1995

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Macon Housing Authority v. Grace Daniels

This case was not a jury trial.

Ms. Daniels sought our assistance in January 1990 following notice that her lease was being terminated. The incident which caused this action took place several blocks from MHA property, at a busy corner intersection where the ground is littered with soda cans, food wrappers, cigarette butts, packs, etc. The deposition testimony of one of the police officers was that Ms. Daniels was ordered to exit the car by the other officer, not merely "observed" exiting the car as Mr. Hiscox states. Our client was following police instructions, and not exiting the car to dispose of drugs, as one might surmise from Mr. Hiscox's description. Ms. Daniels stepped out of the car onto ground littered with refuse.

When Ms. Daniels sought our assistance, the charge of possession had been nol prossed by the District Attorney. As we were conducting discovery, the issue of whether the confidential informant had been actually able to see Ms. Daniels purchase cocaine was crucial to whether her version of the events of that night was plausible. We argued that we were entitled to question the informant and, in fact, had case law to support our position.

After two hearings, the judge ordered the MHA to instruct the informant to appear at his office to answer questions. This is contrary to Mr. Hiscox's assertion that we "unsuccessfully attempted to force" the MHA to disclose the informant's identity. He states that our actions "would have certainly resulted in retaliation." In truth, only the judge would have known the informant's identity, and we never intended to endanger that individual.

A little more than a week after the judge issued his order, the District Attorney's office changed its mind and decided to prosecute our client. As part of a plea bargain, Ms. Daniels, the mother of three children, pled guilty to possession in exchange for not going to jail. She then agreed to move from public housing and we withdrew from the case.

GLSP Response to Testimony of John Hiscox  
Subcommittee on Commercial and Administrative Law  
Committee on the Judiciary  
September 29, 1995

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Macon Housing Authority v. Patricia Osborne

Ms. Osborne, the mother of five children, lived in Anthony Homes for 2-1/2 years.

Her 18-year old nephew would come to her apartment in the afternoon until his parents got off work. According to policy, he sold cocaine to an undercover officer on September 17, 1990.

More than 60 days later, Ms. Osborne had a conference with the MHA staff and was told that her tenancy was being terminated because of this sale. Her nephew had not been charged with anything and nothing illegal was found during a raid on her house. She received a notice of termination dated November 27, 1990.

She asked her nephew to stop coming to her apartment and he complied.

Our client was not charged with anything, nor was there any evidence that she knew what her nephew was doing. Once a suspicion was raised, she took action to keep her nephew from coming to her apartment. We again were applying the same standard articulated by the MHA lawyer. Our belief was that whether she had knowledge or control were questions for the jury to decide.

GLSP Response to Testimony of John Hiscox  
Subcommittee on Commercial and Administrative Law  
Committee on the Judiciary  
September 29, 1995

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Macon Housing Authority v. Annie Brown

Ms. Brown was notified that her lease was being terminated on November 2, 1990.

The facts of the Brown case are as outlined by Mr. Hiscox, but during the first trial it was not made clear who was shot at or why. Evidence linking Ms. Brown's son to any illegal activity was not clear and did not convince all the jury members in the first trial.

At the second trial, the MHA found a witness at the last moment who said that Ms. Brown's son had been involved in drug related activity. The jury was split 3-3 twice on the first day. The judge sent the jury home and they came back the second day and deliberated 1 hour and 40 minutes more before deciding in favor of the MHA.

Macon Housing Authority v. Enga Scott

Ms. Scott's case was accepted in September 1994.

The court in this case ruled on a Motion to Dismiss that the question of whether the activities of Ms. Scott's son constituted a threat to the health, safety, etc., of other MHA residents or employees was an issue that the jury should decide.

The court also found that whether or not the drug activity was "near" the MHA property was a matter for the jury.

The issues of whether Ms. Scott knew or should have known about her son's drug activity were also to be decided by the jury.

# Sometimes the city's eviction cases aren't as clear cut as they need be

TEL/NEWS

MAY 26 1990

By Dan Maley

Macon Telegraph and News

Annie Causey says she supports the Macon Housing Authority's efforts to evict drug dealers from public housing, but she wishes she hadn't been included on the list of undesirables.

Last December, the housing authority sent Causey an eviction notice that said she had to leave because Macon police raided her home in July and arrested a man for possession of crack cocaine with intent to distribute.

Causey, 42, has lived in the four-bedroom apartment for over four years.

A few days after the first letter arrived, Causey received another acknowledging that the drug raid

happened at an apartment down the street. Still, she had to leave, the letter said, because her 26-year-old son Frankie Causey was arrested during the raid and charged with loitering.

Annie Causey went to Georgia Legal Services for help. Her case is still pending in Bibb County Civil Court.

"If there were drugs in it, I would be more than happy to move out of the project," Causey said Thursday. "But I don't do drugs, and nobody in my family does drugs."

Causey was in the news 1½ years ago after her daughter, 17-year-old Teresa Causey, died after an abortion performed by a Macon doctor. She now lives with a 21-year-old son and two grandchildren, ages 2 and

2. Annie Causey said she didn't know where her family would move if they were evicted.

In court papers, Causey's lawyers said that Frankie Causey wasn't listed as a tenant on his mother's lease when the drug raid happened. Annie Causey has signed an affidavit stating that Frankie Causey was taken off the lease four months before the raid.

Despite her fight to keep her home, Causey maintained that the housing authority's eviction efforts are working. She said her neighborhood has been a lot safer since a drug-dealing neighbor was evicted a few months ago.

"When they moved her, they got rid of the drugs," Causey said.

## ATTACHMENT B

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 JOHN W. SMITH  
 CHARLES M. CORK, JR.  
 CARR D. DODSON  
 TIMOTHY K. ADAMS  
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 H. JEROME STRICKLAND  
 HUBERT C. LOVEIN, JR.  
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 ROBERT C. NORMAN, JR.  
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 JOHN T. MITCHELL, JR.  
 DAN BULLARD IV  
 H. J. STRICKLAND, JR.  
 DOROTHY J. ADAMS  
 GREGORY C. HORTON  
 THOMAS W. JOYCE  
 BRANDON A. OREN

June 6, 1990

Honorable Burl Davis  
 Judge, Civil Court of Bibb County  
 Bibb County Courthouse  
 Macon, GA 31298

RE: Macon Housing Authority vs. Annie R. Causey  
 Civil Court of Bibb County - Case No. 063652-D

Dear Judge Davis:

Enclosed please find a Motion to Dismiss Without Prejudice and proposed Order. I respectfully request by this letter that the Court execute the Order which I have prepared with regard to the above-referenced case.

The Macon Housing Authority was prepared to move forward with this dispossessionary action on the ground that Frankie Causey, who is a named tenant on Ms. Causey's lease, had violated the terms of the lease by the possession and distribution of cocaine on Macon Housing Authority property. The Macon Housing Authority was prepared to produce two witnesses at the trial of this case, who could positively testify to Mr. Causey's conduct in the sale of cocaine. However, the Macon Housing Authority has concluded that Ms. Causey made a good faith effort to have Frankie Causey removed as a named tenant from the lease prior to the time of this incident.

The Macon Housing Authority is uncertain if it can establish that Annie Causey had any knowledge or control over Frankie Causey at the time of this incident. In addition, the Macon Housing Authority cannot conclusively establish that Frankie Causey was still residing at 2430 B Street, although his name technically remains on the lease as a named tenant. The Macon Housing Authority has no intention of trying to

Honorable Burl Davis  
June 6, 1990  
Page 2

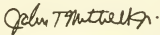
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## ATTACHMENT B

evict the head of household, Annie Causey, on a technicality due to her failure to properly follow through with removing Frankie Causey from the lease.

I am notifying opposing counsel, Gregory Bushway, by copy of this letter of our motion to dismiss this case without prejudice. We certainly appreciate the Court's consideration of this matter. If I can provide you with any additional information, please do not hesitate to contact me.

Sincerely yours,



JOHN T. MITCHELL, JR.

JTMjr/ssb

cc: ✓ Mr. Gregory L. Bushway

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MACON REGIONAL OFFICE

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Executive Director

MARY A. SUCENES  
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MEREDA DAVIS-JOHNSON, Decatur  
1st Vice President

JOHN MARTIN, Conover  
2nd Vice President

MARY KATZ, Macon  
Secretary

J. DOUGLAS STEWART, Gainesville  
Treasurer

March 5, 1991

Brandon Oren  
Attorney at Law  
Jones, Cork, and Miller  
500 Trust Company Bank Building  
Macon, Ga 31298-6399

Re: Macon Housing Authority v Mia Phillips, CA#73221D

Dear Brandon:

This letter is to confirm our telephone conversation today, in which you informed me that your client the Macon Housing Authority was going to voluntarily dismiss the above dispossession action. You informed that Ms. Glover, the Resident Services Coordinator of Tindall Heights would be meeting with Ms. Phillips to re-establish the lines of communication between the Housing Authority and Ms. Phillips.

Thank you for your cooperation in this matter.

Sincerely,

*Howard Sokol*  
Howard Sokol  
Attorney at Law

cc: Mia Phillips

Thursday, July 12, 1990

Page 10A

# Macon Telegraph and News

Macon Chartered 1823

Telegraph Established 1826, News Established 1884

EDMUND E. OLSON  
President & Publisher

RICHARD D. THOMAS  
Editor & Vice President

JO ANN GREEN  
General Manager & Vice President

JIM CHAPMAN  
Assistant to the Editor

RON WOODGEARD  
Managing Editor/News

BARBARA STINSON  
Managing Editor/Features

ED CORSON  
Editorial Page Editor

R.L. DAY  
Associate Editor

## Legal Services board off base on evictions

If the board of Legal Services Inc. has its way, an injustice could be done to nonparticipating family members of drug dealers in public housing.

The board of the tax-supported corporation is less than thrilled about the idea of having its lawyers "interfere" with government efforts to evict suspected drug offenders from public housing units — evictions now legal under the 1988 Anti-Drug Abuse Act.

Recently the board voted to discourage local affiliates from intervening in local eviction cases. It did so after hearing testimony from the Macon Housing Authority, which said that Georgia Legal Services was frustrating the new dealer-eviction policy. Could that be extended to mean that tax-supported public defenders shouldn't be allowed to represent indigent criminal defendants because it might frustrate tax-supported government efforts to prosecute?

Legal Services Inc. was created to give the poor a voice in civil matters, although its affiliates have limited control over what types of cases to pursue. Clearly, the corporation's board — at the behest of Housing Secretary Jack Kemp — doesn't want its attorneys rushing to the aid of those caught up in the government's drug purges.

We acknowledge the need for extraordinary means in some aspects of the drug war, but we're also for maintaining legal protection for the poor. And when the law says that families of drug-dealers living in the same unit can be evicted right along with suspects, even if they had no involvement with the illegal enterprise, that need becomes more evident.

We've never been too comfortable with the idea of public housing cancelling leases of drug suspects, which appears to skirt the legal canon of presumption of innocence. The 1988 law, as it is now interpreted, does exactly that.

What bothers us more, however, is the guilt-by-association aspect of the purges. However expedient that may be in cleaning up the housing projects, we share critics' concerns that the government is ignoring a constitutionally protected right to contest the eviction beforehand.

"The thing you need to be careful about is guilt by association and trial by family," said Henry McLaughlin, head of the legal services program in Richmond, Va. He also noted that well-off families with drug-addicted teen-agers get sympathy; in the projects they get evicted.

Laws and legal concepts mean little without access to a court. And that's exactly where Georgia Legal Services and its sister agencies across the country are supposed to come into the picture. When that access is narrowed by the parent board with inhibiting resolutions, the framework of justice is weakened.

ATTACHMENT E  
LAWYER'S NOTES

2

APPEARANCES:FOR PLAINTIFF:

MR. ZANE DENNIS AND  
MR. WILLIAM WALSH, IV of  
Georgia Legal Services  
791 Poplar Street  
Macon, Georgia 31201

FOR DEFENDANT:

MR. TOMMY JAMES,  
MR. JOHN MITCHELL AND  
MR. BRANDON OREN of  
Jones, Cork & Miller  
500 Trust Company Bank  
Building  
Macon, Georgia 31298

STIPULATION:

MR. WALSH: This will be the deposition of  
Mark S. Cotton, who wants to be called Mark S. Cotton  
and not Officer or Detective, because this is his day  
off. We are here today to take your deposition in  
the matter of the MHA's eviction of Tabitha  
Whitehead. This deposition is taken for purposes of  
cross examination and all other purposes contemplated  
by the Georgia Civil Practices Act.

(OFF THE RECORD)

(Whereupon witness was  
sworn by Court Reporter).

(\*\*REPORTER'S NOTE: Signing of the transcript is WAIVED  
by agreement of witness and counsel. Witness would like a  
copy of transcript).

## ATTACHMENT F

## LAW OFFICES

## HULL, TOWILL, NORMAN &amp; BARRETT

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JOHN W. GIBSON  
WILLIAM F. HAMMOND  
MARK S. BURGHEEN\*  
GEORGE R. HALL\*  
JAMES B. ELLINGTON  
P. MICHAEL TAYLOR\*  
ROBERT A. MULLINS\*  
WILLIAM J. KEOGH III  
EDWARD J. TARVER  
J. NOEL SCHWEERS III\*  
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R. E. NANNI, III\*  
SUSAN O. BARRETT  
TIMOTHY E. MOSES\*

\*\*ALSO FL AND S.C.  
\*ALSO S.C.

September 26, 1995

Hon. Paul Coverdale  
United States Senator  
Senate Office Bldg.  
Washington, DC

VIA FAX: 202-228-3783

RE: Senate Appropriation Bill  
Legal Services Corporation

Dear Senator Coverdale:

My firm and I have represented the Housing Authority of the City of Augusta probably since its establishment in the late 1930s. It is from that perspective that I am writing, and the views herein are my own and not necessarily those of my client.

In the course of representing the Housing Authority, we most often find that tenants are represented by Georgia Legal Services. I want you to know that without fail, the Legal Services lawyers have represented these clients within the bounds of ethics, propriety and professionalism.

Of course it would always be easier if the Housing Authority could act against a tenant and the tenant did not have counsel at all. However, I do not believe that is fair or in keeping with our standards of justice in this country.

Let me also say that we have litigated cases where Legal Services represented tenants whose family members were alleged to have dealt in drugs on Housing Authority premises. There are standard lease provisions that allow termination of those tenants. The difficulty we have had in enforcing those provisions has been with decisions of the trial and appellate courts in Georgia and I do not attribute that problem to legal

## ATTACHMENT F

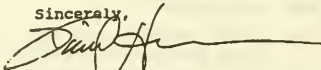
HULL TOWILL NORMAN &amp; BARRETT

Hon. Paul Coverdale  
September 26, 1995  
Page 2

aid attorneys who are simply representing their clients as would any competent attorney.

I am told that Sen. Domenici proposes an amendment that would protect the ability of Legal Services to adequately represent the interests of its clients. I urge your positive consideration of that or other amendments which would not impose further restrictions on the ability of impoverished citizens to receive the meager legal representation currently available to them.

Sincerely,

A handwritten signature in dark ink, appearing to read "David E. Hudson", with a long horizontal flourish extending to the right.

David E. Hudson

DEH/nhb

**COMMUNITY  
LEGAL  
SERVICES, INC.**

1424 CHESTNUT STREET  
PHILADELPHIA, PA 19102  
215-981-3700  
FAX 215-981-0434

July 20, 1995

U.S. Representative George W. Gekas, Chair  
House Judiciary Subcommittee  
on Commercial Administrative Law  
Congress of the United States  
House of Representatives  
Washington, D.C. 20515

Re: Response to Testimony to the Subcommittee  
on Legal Services

Dear Representative Gekas:

I am writing to respond to testimony presented to the House Judiciary Subcommittee on Commercial and Administrative Law by Michael Pileggi, an attorney with the Philadelphia Housing Authority (PHA). I would appreciate it if this response would be included in the Subcommittee's hearing record.

I am the Interim Executive Director of Community Legal Services, the legal services program in Philadelphia to which Mr. Pileggi apparently referred in his testimony before the Subcommittee. Mr. Pileggi's testimony misstates Community Legal Services' policies and practices in handling public housing cases, and fails to illuminate the fact that the need for the litigation he discusses results simply from the repeated failure of his client to comply with law, administrative awards, and court orders. As with legal services work in general, our office seeks only to force the Philadelphia Housing Authority to follow the law in its dealings with our clients; Mr. Pileggi's complaints are the result not of inappropriate action by opposing legal

services attorneys, but rather of the enforcement of federal law by our judicial system.

Community Legal Services provides the only source of legal representation for indigent Philadelphia public and subsidized housing tenants experiencing housing problems. There are currently approximately 20,000 public housing units in Philadelphia. Approximately 80,000 people live in those units. There are many thousands of additional Section 8 subsidized units in the city.

CLS is contacted daily by tenants facing serious housing problems including inadequate and often dangerous living conditions resulting from the landlord's failure to make repairs, rental overcharges which place tremendous pressure on already impoverished families, and illegal lockouts and evictions which raise the specter of homelessness. CLS provides direct legal representation to approximately 400 to 500 tenants each year, and advice and referrals to literally thousands more.

As a result of the enormous demand for our services, we must screen our cases closely for merit. The need for this screening is twofold. Ethically we cannot bring frivolous cases. Practically, time spent on unsuccessful cases is time that cannot be spent achieving results for other tenants.

It is also CLS' policy not to represent public housing tenants who are being accused of drug activity. Our client community has requested that we do this. As a result, CLS will not take a case where the housing authority is seeking to evict a tenant because of alleged drug activity.

On occasion, we have become aware of drug activity allegations after we have become involved in a case. Once we have undertaken representation, we have an ethical obligation to continue. As a result there have been several instances where CLS has continued to represent a tenant after learning that he or she was charged with drug activity. However, these cases are extremely rare. I would estimate that there have been no more than four of them in the past ten years. CLS will not file a bankruptcy in order to keep someone charged with drug activity in a public housing unit.

In his testimony presented before this Committee, Mr. Pileggi claimed that CLS has filed a large number of spurious suits in federal court. He implies that these cases are brought simply to generate attorneys fees. The reality is quite different.

Less than 7% of CLS housing cases end up in federal court. As a rule, those cases are only filed after PHA has affirmatively failed to correct egregious and proven illegal conduct after months, if not years, of being informed of the problem. Most of the federal court cases arise from the failure of the administrative agency to comply with its own PHA administrative grievance awards after that grievance process has been completed. That process takes months to complete. Before a tenant may file a grievance, the tenant must first complain to PHA about the problem. If PHA fails to respond within a reasonable time, the tenant may then file an administrative grievance. Typically it takes four to six months before a grievance hearing is even scheduled. Once a grievance award is obtained, it often provides time periods of up

to six months for PHA to make the repairs. If PHA fails to abide by the award, our office provides PHA an additional 30 days written notice before suit is commenced. Unfortunately, in many cases PHA simply does not respond to these repeated notifications of the need for it to comply with the law, and litigation becomes the only way to force the agency to perform its obligations.

Contrary to the PHA attorney's assertions, the lawsuits do not involve innocuous landlord tenant problems such as leaky faucets. Rather, they are the last resort legal remedy for families, usually women and children, who are living in unsanitary and sometimes dangerous conditions. It is not uncommon to have tenants suffer from serious and/or multiple repair problems for two years before a federal lawsuit is filed. Often that is a two year period where the tenant watches a roof leak turn the unit into a nightmare of collapsed ceilings, water damaged walls, warped floors, damaged personal property and resulting devastatingly high utility bills. Other examples include tenants living in units that are without heat or that have been declared imminently dangerous by the Philadelphia Department of Licenses and Inspections because the unit is on the verge of physically collapsing.

The lawsuits are filed in federal court for sound reasons. The tenants are seeking to enforce federal rights. The federal court calendar moves along far more quickly than the state court calendar. Additionally, the landlord tenant court in Philadelphia does not have jurisdiction to order injunctive relief in affirmative actions by tenants against landlords.

Contrary to the PHA attorney's assertions, the federal lawsuits are not filed to generate attorneys fees. Nor are the lawsuits either spurious or frivolous. They are filed to ensure that PHA complies with the law and that the tenants' most basic housing needs are met. They are filed to obtain vital repairs or to have illegal rental overcharges removed or to prevent improper evictions. Neither CLS nor our clients desire litigation. We are merely looking for PHA to follow the law and to perform its duties as a landlord. Because it has failed repeatedly to do so, our clients have been forced to sue.

Our office receives attorneys fees in accordance with federal law because the courts rule in favor of the tenants and determine that the lawsuits were meritorious. These awards have resulted from PHA's failure to comply with court orders, or to settle lawsuits it clearly cannot win, thus forcing protracted and unnecessary litigation. In each case the court has reviewed the requested fee awards and has determined that the fees are proper and required to be paid under the law. The fees are small in comparison to the relief that is granted to the tenants.

In passing the attorneys fees statute, Congress recognized that the threat of attorneys fees can provide incentive for an agency to take the necessary actions to avoid future lawsuits altogether. PHA need only comply with its legal obligations to its tenants and it will no longer face the assessment of attorneys fees resulting from lawsuits that it loses. As mentioned above, PHA typically has one to two years to make repairs before the lawsuit is even filed. Moreover, it is in the tenant's best interest to avoid the lawsuit altogether, as the tenant would be delighted to have the

repair made in a timely fashion and to avoid the need to spend time in court. CLS has a similar interest as we have a limited staff and a great demand for services. If a problem is resolved short of a lawsuit, that frees up time and resources that we can devote to the problems of other clients.

Mr. Pileggi claims that PHA faces "an average of thirty to thirty-five bankruptcy filings a month by PHA tenants" but fails to mention that the huge majority of those bankruptcies are not filed by CLS. Our office has filed approximately 2 bankruptcies per month against PHA over the past year--a very small portion of our caseload and apparently only a small percentage of the bankruptcies PHA faces.

The PHA attorney's argument that the lawsuits filed against it to enforce public housing rights should be handled through the grievance process or the state court system makes little sense. In fact, those cases are almost always handled through PHA's own grievance process before suit is filed. It is because of PHA's failure to abide by grievance awards that a lawsuit becomes necessary. While PHA implies that the only reason that cases are filed in federal court is that attorneys fees would not be available in state court, in fact, attorneys fees would be equally available in state court. Moreover, CLS utilizes federal court because federal judges are much more comfortable with enforcing federal law and, as discussed above, the landlord tenant court in Pennsylvania does not have jurisdiction to enter affirmative injunctive relief on behalf of tenants. It only has jurisdiction to grant possession and

determine the amount of funds that might be due. Contrary to PHA's statements, these cases could not be brought in that court.

The PHA attorney also states that many people file multiple federal lawsuits. The figures prove otherwise. Although a few tenants have filed multiple suits, this is the exception rather than the rule. Less than 10% of the people CLS has represented in federal court have filed multiple lawsuits against PHA. Among those that have done so, the need for both lawsuits was clear and they were completely successful in obtaining the relief sought.

The PHA attorney also states that federal lawsuits are filed in order to forestall eviction action. This is simply not true. As PHA well knows, a pending federal court action does not prevent or forestall an eviction action. Quite the opposite, PHA has recently entered into a pattern of retaliation by attempting to evict tenants who have filed lawsuits against PHA. In a number of cases PHA has started the eviction process after the tenant has received a successful court result in federal court.

Finally, as an example of an egregious result from a "leaky faucet case", the PHA attorneys claims that it had to pay a 100% rent abatement plus \$15.00 per day in a case that, PHA implies, involved only minor repairs. PHA's remarks could not be further removed from the truth. The tenant involved spent almost three years trying to force PHA to make a host of serious and desperately needed repairs to her unit. Among other things, the tenant, her disabled adult son and her three grandchildren spent an entire winter without heat. The \$15.00 per day requirement

was added after PHA repeatedly failed to comply with grievance awards and court orders. The case was notable because of PHA's egregious misconduct. The fact that the tenant received a large sum of money reflects both the hardships that the tenant suffered and PHA's intransigence at obeying the law.

PHA's anecdotal comments are also seriously misleading:

Mildred T. This tenant's unit caught fire and became uninhabitable. PHA had a clear duty to transfer the tenant and her five minor children to a habitable unit, but it refused to do so despite repeated requests from counsel, leaving the tenant no choice but to initiate litigation. Approximately four months after the fire and after PHA insisted upon a full hearing on the plaintiff's motion for preliminary injunction, a court order was entered directing PHA to rehouse the plaintiff. PHA did not raise utility allowance issues until many months after the preliminary injunction order.

Theresa R. The tenant's unit caught fire and was rendered uninhabitable. Approximately 7 months after the fire, the tenant obtained a preliminary injunction order directing PHA to rehouse the plaintiff and her seven minor children. During that time the plaintiff and her family lived in the first floor of the burned out unit, without heat or hot water. The upper two floors were dangerous and totally uninhabitable. Once again PHA did not raise the utility allowance issues until many months later.

Gwendolyn W. This tenant and seven minor children were the victims of arson and not the perpetrators. PHA attempted to evict the tenant on arson charges and lost in a trial before a judge in November of 1993. In 1994 PHA attempted to reraise

the same cause of action by calling it destruction of PHA property. At PHA's request, that matter was tried before a jury and PHA lost that case on June 7, 1995--eight days before PHA's testimony to this Committee. In the meantime, PHA has refused to schedule hearings on the tenant's administrative grievances for repairs, rent abatements, payment of the monthly utility allowance and request for a transfer to a lead-free unit in violation of the federal grievance regulations and the federal court consent decree that governs PHA's grievance process. Some of these grievances are more than two years old. It was PHA's failure to act upon those grievances that necessitated the currently pending federal court action.

Vera I. PHA's paint practice works an enormous hardship on tenants. In this lawsuit PHA has inconsistently claimed it has no paint policy and then that it does have a policy. In any event, PHA rarely has paint in stock. It never repaints a unit as long as a tenant resides in it. PHA does not repaint or provide paint after major repairs. PHA never provides paint or repaints the exterior of units, despite the fact that PHA admits that this failure leads to the rapid deterioration of the exterior wood. PHA does not paint units of tenants who are disabled and cannot do the painting themselves. On the limited occasions and under the limited circumstances that PHA does provide paint, tenants may only get two gallons at a time, requiring multiple cross city trips and multiple payment of transportation charges in order for a tenant to repaint a unit. PHA makes no provision for the removal of flaking and peeling lead paint in units and merely asks tenants to handle the process on their

own. Even where there is a legitimate dispute about rental charges, PHA will refuse to give paint to tenants that PHA believes have not paid all charges.

Christine L. This tenant, her four children and one grandchild lived in a three bedroom unit (not five as claimed by PHA) and requested a transfer to a five bedroom unit in 1991 because the family was very overcrowded. The tenant also requested serious plumbing repairs. When no transfer was forthcoming and when the repairs were not made, the tenant filed a grievance in February of 1993 and obtained a grievance award for a transfer in June of 1993. When PHA still failed to follow through on the transfer or the repairs, the tenant filed a lawsuit in the fall of 1993. PHA filed a frivolous motion for summary judgment which was denied. PHA insisted upon taking the case to trial and was berated by the trial court for wasting everyone's time because it was clear that PHA had not complied with the grievance award. The judge admonished PHA that insisting upon a full trial was only likely to increase the attorneys fees. After a trial of one full day, judgment was entered in favor of the tenant. The tenant received damages in excess of \$3,000.00 and was finally transferred to a six bedroom in April of 1994. No testimony was elicited about PHA's difficulty in obtaining a five or a six bedroom unit. On the contrary, the testimony revealed that there were many five bedroom units which could have been made ready for a transfer.

Rita L. This tenant had to file lawsuits against PHA to obtain needed repairs in her unit. The first lawsuit resulted in most of the attorneys fees that were awarded because PHA refused to settle, but instead chose to litigate the action up

until the trial date, despite the fact that PHA did not possess a meritorious defense. The tenant and her four minor children were living in a unit that had no plumbing pipes. As a result, there was no water service to the unit. There was no operating tub, sink or toilet. The subsequent actions were filed when PHA failed to make repairs after the tenant had exhausted the administrative process. Motions to enforce settlement agreements have been necessary because PHA has not complied with the court approved settlement repair schedules. PHA has never claimed that the tenant caused damage to the unit. The tenant has always received the relief sought in her lawsuits and was certainly entitled to such relief.

Gwendolyn S. This tenant lived in a PHA unit that was in deplorable condition. For three years the tenant has patiently worked through the administrative and legal process to force PHA to make repairs. The repairs in question clearly did not arise from tenant damage. The major repairs included replacement of the roof and repair of the resultant water damage in two rooms due to the roof leak. It was also necessary to replace all of the windows in the unit because the window frames were rotted out. All of the plumbing in the unit also leaked and worked poorly at best. PHA never proved that any of these repairs were tenant damage. To this date, PHA has not completed all of the repairs.

Lupina R. This tenant filed an action against PHA when PHA evicted her for nonpayment of rent despite her satisfaction of a rent arrearage. In response to her lawsuit, PHA for the first time raised allegations that the tenant had engaged in a variety of illegal activities. These allegations had never been raised in PHA's lease

cancellation notice or eviction complaint, which were based solely on nonpayment of rent. (It should also be noted that the tenant was ultimately acquitted of the only one of these allegations of which she was ever criminally charged.) The court found that the tenant had been wrongfully evicted by PHA and awarded compensatory damages of \$3,072.00 and attorney's fees of \$5,372.76. While the tenant's wrongful eviction action was pending, PHA brought an adversary complaint against her in another tenant's bankruptcy case, complaining of the same alleged illegal activities. All of PHA's claims were dismissed, with the exception of its allegation that the tenant had improperly assisted other tenants in filing bankruptcy petitions. PHA prevailed on that one claim and was awarded \$3,370.00.

Bonnett D. This tenant requested several grievances because PHA was overcharging her on rent in clear violation of the U.S. Housing Act. The tenant was successful in those grievances. PHA then determined that the tenant should be transferred to a smaller unit when several of her adult children moved out. The tenant believed that she was in a correctly-sized unit and disputed PHA's forced transfer through the grievance process and in state court. The final state court resolution provided that the tenant would have to accept a transfer or be evicted. PHA then attempted to transfer the tenant to a unit that was too small and that did not meet the tenant's medical needs. The tenant suffered from a medical condition that made it difficult for her to climb stairs. An adult child lived with the tenant in order to assist the tenant with daily living chores such as cleaning, shopping, etc. A small child also lived with the tenant. PHA refused to recognize that the adult child

lived with the tenant and proposed to transfer the tenant to a one bedroom unit that required that the tenant climb seven steps before entering the unit. The tenant brought a civil rights action when PHA refused to offer a correctly-sized transfer unit without steps, as necessitated by the tenant's medical condition. As a result of the lawsuit the tenant was transferred to a two bedroom rental unit with only one small step at the entrance.

Harriet M. This tenant lived in a PHA unit that had been declared imminently dangerous by the City of Philadelphia Department of Licenses and Inspections. Due to the tenant's clearly documented medical condition, the tenant had to be transferred to a unit in her immediate area so that she could continue treatment with a psychiatrist at the local health center. The tenant suffered from severe agoraphobia. It was the opinion of the tenant's doctors that the tenant would likely suffer a severe psychotic episode if the tenant were transferred to an unfamiliar area. After suit was commenced, PHA offered to transfer the tenant to a high rise building far away from the tenant's treatment center. Pursuant to the tenant's crossmotion for summary judgment, relief was entered and the tenant was transferred to a suitable low rise unit in the appropriate area of the city.

Krissy J. This tenant has filed several civil rights actions against PHA. The suit seeking \$50.00 occurred only after the tenant had exhausted the administrative process and PHA failed to comply with the grievance award. The suit was not filed until after PHA had received three letters and numerous phone calls from the tenant's counsel over a six month period, threatening the suit unless the funds were

paid. PHA did not respond to the letters or phone calls, leaving the tenant with no choice but to file suit in order to receive the awarded funds. PHA made no effort to pay the money until after the suit was filed.

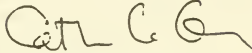
Sherry J. This tenant filed suit without first exhausting the administrative process because PHA had threatened to evict her without affording her any administrative or judicial due process rights. After suit was commenced, PHA agreed to the relief requested by the tenant and then failed to carry out that court approved agreement. The tenant filed a motion to enforce the settlement agreement and, despite the fact that PHA had clearly failed to comply, PHA insisted upon a trial. Once again, complete relief was ordered for the tenant and the attorneys fees award reflected that PHA had forced the case through trial.

Rosemarie M. This tenant obtained a grievance award that PHA would pay her moving expenses when she was transferred to another PHA unit due to the uninhabitable conditions at the prior unit. PHA failed to respond to a number of warning letters and phone calls and, after a lengthy delay, the tenant had no recourse but to commence suit to collect the funds.

Our office has no knowledge of the case of In re Victoria W. We believe it was not a case handled by our office. We are similarly unaware of any action where a tenant filed a bankruptcy to avoid an eviction based on arson. We believe that, if that case occurred, the debtor was not represented by CLS.

We appreciate the opportunity to present these responsive comments and thank you for your consideration.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Carr C. Carr', with a stylized flourish at the end.

CATHERINE C. CARR  
Interim Executive Director

CCC/

## Neighborhood Legal Services Association

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PITTSBURGH, PENNSYLVANIA 15222-3799  
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644-7452

October 6, 1995

Brian T. Ellis, Producer  
ABC News 20/20  
147 Columbus Avenue  
New York, NY 10023

Dear Mr. Ellis:

I have attached a copy of testimony submitted to a Congressional subcommittee in May, prior to Ms. Henson's testimony, and a second statement recently submitted in response to her testimony.

As I stated earlier by phone to Frank Mastropolo, the representations Ms. Henson makes regarding two specific cases are inaccurate or misleading. Neither of these two cases were handled by me personally, although I have discussed them with the attorneys who were involved and otherwise obtained information about them.

In the first, involving a drug transaction in the tenant's unit by her boyfriend, there was no reference in any court pleading that such a transaction had occurred or that the tenant was being evicted for this reason. In addition, NLSA did not take any appeal for this tenant. The tenant herself appealed from the district justice level to a board of arbitration and then to a trial by a judge. NLSA only became involved after this second appeal. Although it is not entirely clear, the reason for the lengthy delay in concluding this case appears to be a matter of mishandling by NTR or ownership counsel. There were two district justice proceedings. It appears that NTR was not successful at the first one in obtaining a judgment for possession. NLSA counsel had no indication of Ms. Henson's drug activity observance and inexplicably the court was not asked to evict for this reason.

Regarding the second matter, the particular tenant referred to by Harriet Henson claimed that damage in her unit was the result of materials and construction which were not designed to withstand the

normal wear and tear of a unit in which a number of children resided.

The lease which NTR assisted in drafting, provided tenants with the opportunity to pay for any damages that they were responsible for before being subject to eviction. The NLSA attorney concluded that the determination of who was fully or partially responsible for the damage had to be determined by a judge. When there is a disagreement, this is a judge's decision - not an attorney's or a property manager's. NLSA did not file a lawsuit. It defended this family from eviction while a court determined responsibility. But for this representation, low income tenants are denied access to procedures designed to achieve just results. If the tenant remained in the unit, it was only because she met her responsibility under the lease to cure that damage that the judge determined her family was responsible for.

Each of these cases occurred over seven years ago. Particularly in the context of the thousands of cases that legal services organizations, such as NLSA, handle each year, they should not be used to convey the impression that legal services organizations disregard the low income community's need to address serious social problems that they face. You could very easily do a program covering the very important work legal service programs do for many client organizations in this regard. Unfortunately, and despite our essential early representation, NTR, or at least its current leader, has stood out in its opposition to legal services and has been provided a forum by those who are more interested in dismantling legal services than in considering its many accomplishments.

By the way, NTR does not represent public housing residents. The units it is involved with are privately owned and managed. The umbrella organization of public housing tenant organizations in this area has been very supportive of the work we have done for these organizations.

If you'd like to discuss these accomplishments further, give me a call.

Yours truly,

*Donald Driscoll*

Donald Driscoll

DD:mb1

attachment

Response To The Testimony Of Harriet Henson Before The House  
Subcommittee On Commercial And Administrative Law

Neighborhood Legal Services Association has provided legal representation to low income families, threatened with the loss of their rental homes, when it has concluded, following a reasonable investigation, that there is substantial merit to their defense to the eviction action. Should it be determined following this investigation, that a meritorious defense is lacking, or in other words, that the eviction should rightfully proceed because of seriously detrimental tenant conduct, representation is not provided.

Harriet Henson on behalf of the Northside Tenants Reorganization, a resident management corporation, has concluded that when it determines that such seriously detrimental conduct has occurred, there should be no legal proceeding, no fair appraisal of the facts by an objective judge and no delay in putting out the family believed to be responsible for this behavior. Any action by counsel for the tenant to contest its conclusion or protect rights made available by law is itself harmful to the community, in its opinion. She states in her testimony that NTR wins all or 95% of the cases it brings, yet during protracted legal proceedings the resident lives for free while continuing the negative behavior.<sup>1</sup>

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<sup>1</sup> In Pennsylvania, and in particular Allegheny County, a tenant who has appealed an unfavorable summary district justice eviction proceeding can only remain in possession by paying their rent during the Common Pleas Court proceeding. An injunction is

Her general criticisms are unsupported and wrong. Far from winning all or most of the cases it brings, NTR and the ownership with which it works routinely loses these cases. The report of the American Alliance for Rights and Responsibilities, that she cites in her testimony, concluded that NTR and the owner had lost the last ten eviction cases it brought (11/94 Report at p. 10). A review of NLSA records of all cases accepted involving NTR since 1990 indicated that in only two instances were tenants evicted due to conduct in violation of their lease (bad housekeeping). In one other case a back rent judgment was entered; however, the amount was less than that sought due to a reduction in rent for failure of ownership to carry out repairs due under the lease. Other cases were settled or the Court adopted the tenants' defense.

In only one case was the issue of drugs even referred to. In this case the tenant was being assisted in her move into the rental unit by a person believed to be a drug dealer by a management employee. The move-in was stopped. With the assistance of NLSA an agreement was entered into whereby the family was permitted to move in, but was subject to eviction if the alleged drug dealer came onto the property.

The one specific case referred to in Ms. Henson's testimony involved a resident whose rental arrearages were permitted to grow by NTR to the point that it exceeded \$5,000. Only at this time did

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available at any time if damaging conduct occurs during these proceedings. The entire court process, from initial filing in district justice court to Common Pleas Court execution, if appropriate, assuming all available procedures are sought by landlord or tenant, should take no more than 185 days. This has been the case since March 1991.

NTR seek to evict. NLSA agreed to provide representation in bringing a Chapter 13 bankruptcy pursuant to which the tenant would be required to pay back the entire arrearage and court costs, plus stay current in rent, as a condition of keeping her home. Since 1990, four such bankruptcies have been filed. Any competent attorney would be expected to make available to his or her clients the benefit of laws designed for their protection. As a result, the owner is made financially whole, whereas otherwise it would likely suffer the loss of this rental income.

NLSA has committed to organizations made up of income eligible clients that it would provide legal assistance in their efforts to confront serious problems facing their members, including drug activity. A number of tenant organizations are presently receiving this representation. Should a conflict arise, because the organization supports a particular tenant's eviction, NLSA must decline representation for this tenant due to this conflict. NTR, for no known reason, discontinued NLSA representation.<sup>2</sup> Even in the absence of organizational representation, NLSA counsel, as previously stated, have an ethical duty to not provide individual representation unless there is substantial merit to the tenant's defense. If this is lacking, representation has been and will be declined.

A commitment has been made to do a thorough investigation of the facts before determining that substantial merit to the defense

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<sup>2</sup> NLSA represented NTR in the early 1980's when its units were subject to substantial deterioration and threatened with sale for purposes other than low income housing. It assisted NTR to obtain its current position of self management and potential cooperative ownership.

exists. NLSA has communicated to NTR that it will carefully consider information from NTR when making a determination to proceed with representation in particular cases. Unfortunately, NLSA's determination to take contested cases to a judge for a decision has to this point brought it criticism from NTR. Nevertheless, it is hoped that NTR will understand that in our system of justice an impartial judge decides a contested case, and not a property manager and not the attorney for either the property manager or the tenant.

# A Conservative Plea to Save LSC

**F**IRST, LET'S GET one thing straight: I'm a Republican, a conservative Republican. I've spent the better part of my life fighting for Republican candidates and causes. I agree with the broad principles and policies of the Republican Party. Certainly I'm not likely, any time soon, to follow the course of some of my Democratic friends who have taken to calling the "Contract With America" a "Contract on America."

In short, I agree that less government is better government.

Still, the threats to the future of the federal Legal Services Corp. worry me greatly. Having worked in the courts as a lawyer and a judge throughout my career, I find I simply cannot stand by and watch the gutting of federal legal aid efforts on behalf of the poor.

Why support this social program in particular? Because the LSC is a public-private partnership that actually works.

I didn't always feel this way. For a long time I thought that Legal Services lawyers were engaged primarily in class-action work, using the LSC to advance causes that were part of their collective social agenda. Over time, however, I have come to realize that the Legal Services system acts very much like a law firm for the poor, helping individual clients grapple with personal problems that threaten to overwhelm them. Without these services, they have no recourse.

Nationally, the system serves 1.5 million indigent clients. It is administered by 322 basic grant recipients, organizations such as Community Legal Services of Philadelphia or the Central Arkansas Legal Services, that operate 919 neighbor-

hood law centers across the United States. Ninety-six cents of every Legal Services dollar goes to the direct delivery of legal assistance to the indigent.

Each of the recipients of funding is governed by a board of directors drawn from the local community; about 60 percent of the directors are private attorneys appointed by local bar associations. These boards, which also include client representatives, work with the cooperation of their poor clients in the immediate community and surrounding region to guide the program.

## Emergencies

Legal Services lawyers represent their clients in civil matters and address the emergency needs of those who stand and wait at their door. Bread-and-butter issues such as child custody, spousal abuse, divorce, landlord-tenant disputes and governmental benefits such as Social Security make up the bulk of their work.

In Pennsylvania, for example, our state's Legal Services lawyers serve more than 100,000 clients in 67 counties. More than 90 percent of the cases involve family law, Social Security, housing and consumer law. These lawyers are underpaid (their average salary is \$33,700) and overworked, and they do a tremendous job.

What's more, there is no shortage of cases. While the number of Americans living in poverty has steadily climbed to the point where it now approaches 37 million, the LSC has sustained a 52 percent cut in federal funding since 1981.

Today, in Pennsylvania, there is only one Legal Services attorney for every 5,220 potential clients.

Now the congressional budget committee has approved a proposal to reduce federal spending by \$100 billion over the next five years and phase out all funding for the LSC. The proposal is to dismantle federal programs and turn such obligations over to the states.

Pennsylvania already has started down that road, and actions it has taken recently in the area of Legal Services for the poor lead me to wonder just how wise such a federal policy would be.

In the summer of 1994, the Pennsylvania General Assembly eliminated all \$2.5 million in state funding for Pennsylvania Legal Services. In Philadelphia alone, that translated into a loss of \$625,000 and the closing of two neighborhood law centers.

This meant that 4,800 indigent families in the City of Brotherly Love will no longer receive legal assistance. Across the state, it is estimated that at least 12,000 people will have to be turned away.

Who are the people who are no longer being helped?

They are people such as Lorraine, the mother of three children. As her marriage deteriorated, her husband became increasingly violent toward her and their oldest son. After one particularly violent episode, Lorraine turned to Philadelphia's Community Legal Services. An at-

torney there obtained a civil protection-from-abuse order on her behalf which evicted her abusive husband from the house. Community Legal Services then successfully helped Lorraine obtain full custody of her children as well as child support.

## An End to Violence

With the help of Legal Services, Lorraine was able to end the violence in her life. Would anyone argue that giving people a chance to be productive and to raise their children in a secure environment is a worthwhile investment in the future of the country?

Earlier this year, the chancellor of the Philadelphia Bar Association asked me to chair a special commission whose purpose was to win back the funding for the Legal Services program. I could not, in good conscience, turn him down. So far, our efforts have produced a glimmer of hope. Republican Gov. Tom Ridge's 1995-'96 fiscal year budget included \$2 million in funding for Pennsylvania Legal Services.

Now we have to make sure that the Republican Legislature follows the governor's lead. Our task is primarily one of education and persuasion—bypassing the legislators to focus on the human stories (such as Lorraine's) that lie behind the unemotive statistics.

The commission is not looking to create a whole new philosophy. Rather, its members hope to communicate to skeptical legislators just how vital are Legal Services for the protection of the basic rights of the poor. Equal justice for all must remain an American goal.

Our experience in Pennsylvania demonstrates that legal aid to the indigent is not a Republican or Democratic, liberal or conservative issue. It is about what is just and right.

Equal justice for all means that Legal Services must be available to those who have nowhere else to turn. Regardless of party affiliation, we all owe a special obligation to the less fortunate.

The battle to preserve Legal Services funding can unify and strengthen the legal profession. At the national level, I'm convinced that we can make great progress if those of us who know the facts tell them, in honest, human terms. I certainly am not the only Republican to feel this way.

This is a fight that is worth fighting. It is a fight that must be fought, and it is a fight that, with perseverance, can be won. ■

*Mr. Kauffman, a former justice of the Supreme Court of Pennsylvania, is senior partner and chairman of Philadelphia's Dilworth, Paxson, Kalish & Kauffman.*

(TIME, June 19, 1995)

## Civil Assistance May End Too

By ELIZABETH GLEICK

**D**URING HER 23-YEAR MARRIAGE, MARGARET RANDOLPH COULD HAVE qualified as a poster woman for spousal abuse. Her husband Gary Randolph, a sometime dock worker, would get drunk and then "bring out his guns," Margaret says. He would shoot up the house as their three children, now ages 22, 15 and 13, dived for cover under the beds. According to Margaret, one night Gary shot her in the arm with a pistol. Afraid to report the incident to the police, she packed up the children a few months later and moved from their St. Louis home to Chatsworth, Georgia. But Gary hired a detective who found her there; then hired a lawyer to wage a custody battle. Randolph had no money for a lawyer, so at her sister's advice she called a Legal Services office. Judy Freiberg, who has a great deal of experience in domestic abuse and custody disputes, took the case. At the trial last fall, according to Freiberg, after the judge heard testimony including statements from the children, he urged the parties to settle. Under the terms of the settlement, Gary may exercise his visiting rights only by picking up and dropping off the kids at the police station. Margaret, 41, now has a permanent restraining order, as well as her first full-time job, at a yarn factory, and hopes to save the \$350 she needs to change her name. "More than most people,

these women need a strong advocate," says Freiberg. "All they need is a little help and legal protection."

The Legal Services Corporation is the civil side of indigent legal assistance. It is the lawyer of last resort for poor people with family, housing, consumer or entitlement problems. But it has long been a target of conservatives. Senator Phil Gramm has called for LSC's possible abolition, although he may be backing down on that demand. House Budget chairman John Kasich has proposed deep cuts in LSC funding and aims to phase it out altogether.

Traditionally, the right has taken issue with LSC's history of filing class actions against the government on behalf of the poor over welfare benefits, food stamps, and the like. But Christian Coalition leader Ralph Reed told the *New York Times* earlier this year that the corporation should be abolished because it "subsidizes divorce and illegitimacy" by providing legal representation in domestic disputes.

For the most part, however, the LSC has enjoyed bipartisan support since it was created by Congress with President Nixon's backing, in 1974. A private, nonprofit corporation, it administers grants to 323 programs with 12,000 neighborhood law offices in every county in the U.S. In addition, more than 130,000 lawyers are involved in pro bono activities directed by the LSC. But even with the \$415 million that Congress currently appropriates—which is augmented by \$240 million from state and other sources—a recent American Bar Association survey found that less than one-fifth of the civil legal needs of the poor are being met; the LSC says it has to turn away 43% of eligible clients. The resulting triage means the LSC now rejects divorce cases except when spousal abuse is involved and eviction cases unless a family risks homelessness.

Now the LSC budget, like other federal programs of its kind, is in for some heavy cuts—perhaps 35%—and it may also be barred from filing class action. But the LSC insists that those account for less than one-tenth of 1% of its caseload—1,600 out of 1.7 million cases in 1994. "People don't understand what we do," says Freiberg. "If they answered the phone and heard our clients and the kinds of stories we hear, people wouldn't be so anti-Legal Services."

—Reported by David Saldeman/New York



Randolph and her children in Georgia.



(ABA Journal, May 1995)

# Everyday People

BY DAVID G. SAVAGE

*The work of storefront clinics funded by the Legal Services Corp. is not glamorous—just crucial to those who cannot help themselves*


**T**he North Philadelphia neighborhood near the intersection of Broad Street and Erie Avenue once stood at the heart of industrial America.

Nearby factories turned out radios and television sets. Bought 500 men's suits and Stetson hats, as well as all manner of shirts and blouses.

*David G. Savage covers the Supreme Court for the Los Angeles Times*

But those days are long gone: the factories shuttered, their windows smashed. Now, North Philadelphia is a working-class neighborhood with no work.

But there is one notably busy spot near the intersection, a bright blue storefront tucked between an abandoned shoe outlet and a recently deceased Chinese carry-out. By 9:30 a.m., the waiting room at Community Legal Services of North-Central Philadelphia is jammed with two dozen people waiting to see a lawyer.



Legal aid attorneys Irv Ackelsberg and Pamela Walz find satisfaction, along with frustration, in assisting the poor.

Inside, you can see a kind of law practice, and hear tales of desperation, that many attorneys never encounter in their careers.

It is also a type of law practice that may disappear soon, as Congress considers whether to eliminate funding for the Legal Services Corp., the independent federal agency that largely funds local legal aid programs.

Last year, the Pennsylvania Legislature, moving a step ahead of Washington, abolished its state funding for legal aid. Community Legal Services of Philadelphia was forced to close two of its four neighborhood centers. The blue storefront on Broad Street has survived, but no one knows for how long, since it is dependent on the LSC for nearly half of its funding.

For the poor and struggling people who fill the waiting room,

the stakes are high.

A 72-year-old woman says she is in danger of losing her house all because she paid a crooked contractor to repair her kitchen and bathroom. Another woman, a 46-year-old mother and former city employee, says an auto accident has left her unable to work, but the state has notified her that her only benefits are about to be terminated.

A surprisingly large number of clients are there because of problems involving defaults on student loans, many of which were never taken out in the first place.

William Simmons, a short and stocky man, is obviously agitated and nearly rushes into the office when his name is called.

"I'm being robbed," he announces. A few days before, he received a call from an official at a state agency in Massachusetts, telling him the federal Internal Revenue Service is seizing his \$1,500 tax refund. The agency employee said the money will repay his student loan to "Andover." This is not the tony Ivy League prep school, but a defunct truck-driving school that once recruited students in Philadelphia.

"About six years ago, I went with a guy to a place at 18th and Erie and took a test," Simmons explains. "But they never called me back. I didn't take out a loan. I did not go to any truck-driving school."

It is an amazing story, but amazingly enough, attorney Irv Ackelsberg has heard it many times before. "This sounds like a false certification case," he says. A 44-year-old lawyer who manages the North Philadelphia clinic, Ackelsberg has worked his entire career in legal aid, and cultivated a specialty of handling cases involving trade schools and student loans.

The ruse is a familiar one. Unscrupulous schools pay recruiters to bring in students for tests. Once the students' names and social security numbers are on file, they use the information to take out government-backed loans, he explains.

"These kinds of scams may be the cruelest of all because they prey on people who are desperate to get ahead," Ackelsberg says.

In poor neighborhoods, the trade schools and beauty colleges advertise their courses and lure applicants by offering the prospect of a secure, good-paying job. And, as the ads note, federal grants and

loans will pay the tuition, often amounting to several thousand dollars for a semester's worth of instruction of suspect value. New students sign up for the higher education loan—even though they may not have finished high school—and often quit within weeks.

The schools get their money, and so do the banks, since the loans are federally guaranteed. In the end, the taxpayers pick up the tab, and the "students" are then cited for defaulting on a federal loan.

But sometimes, a lawyer can wipe the slate clean for a former student by showing he never enrolled in the school. After a few calls, Ackelsberg is able to reach the Massachusetts official who called about the defaulted loan for the truck-driving school.

"So this is a state guarantee agency?" Ackelsberg asks, nodding as he listens to the response. By law, state higher education agencies guarantee the loans made by the banks, but eventually the bill is passed to the U.S. Department of Education, which brings in the IRS as the ultimate collection agent.

"I have a client here who spoke to you earlier this week. I think we are dealing with a false certification. He never enrolled in the course," he continues.

The agency official, his voice now heard on the speaker phone, concedes he has encountered other similar problems involving the same defunct truck-driving school. Agreeing the original loan may have been wrongly handled, he promises to track down the file and call Ackelsberg back.

For the first time, the look of worry on Simmons' face is replaced by a smile of relief. "I don't think he expected to hear from a lawyer," he comments quietly.

Down the hall, attorney Pamela Walz is interviewing the woman who had been told her state benefits were ending.

According to the woman, she has suffered back trouble for years, but kept working until the accident in 1993. Her car was slammed broadside by a driver who ran a red light. She did not have auto insurance for her car, but what is worse, neither did the driver who caused the accident.

Since then, the woman has exhausted nearly all her resources and has been getting by on a \$205-



a-month state benefit check. But last year, moving yet another step ahead of Congress, lawmakers in Harrisburg cut general assistance for able-bodied people under age 45.

The woman has an official notification form that says under this new legislation, her benefits are scheduled to end—even though she is not under 45 and claims to be disabled for work.

"I think we can help you on this. First, we will file an appeal," Walz says.

As the day wears on, the clients also will include mothers who have lost their child support or need to get away from an abusive spouse. Others have been victimized by con artists and have no idea how to get their money back. Still others simply need advice to understand a densely written government form.

But increasingly, the legal services officials say that because of staff shortages, they must turn away clients or tell them they cannot devote the time necessary to handle their cases. In 1980, Community Legal Services of Philadelphia employed 98 lawyers. This



Clients like William Simmons (left) come to the North-Central Philadelphia clinic when they face fraud or loss of benefits or other money woes.

year, 49 are there.

"This is my 20th year here and there has been uncertainty every year, but this may be the worst," says Louis S. Rulli, executive director of the citywide program. "Since we have lost our state funding, what happens on the federal level is crucial."

In a way, the Philadelphia program has been too successful for its own good. It gained national attention in 1990 when its attorneys won a landmark Supreme Court ruling that declared federal officials had wrongly denied social security benefits to more than 100,000 poor and disabled children.

The case that became *Sullivan v. Zeblev*, 493 U.S. 521, began in 1983 when legal aid attorneys filed

a class action suit against the Department of Health and Human Services challenging its stringent rules for deciding whether children were disabled.

In 1972, Congress had written a broad law giving monthly Supplemental Security Income benefits to poor people who "are blind or disabled," including children. Adults were disabled if their mental or physical impairments prevented them from working, while children were entitled to benefits if they suffered impairments of "comparable severity."

But in the early 1980s, the Reagan administration was seeking to reduce the benefit rolls, including the SSI program.

Two legal aid attorneys began seeing numerous examples of young people with severe impairments turned down for benefits. One was Brian Zeblev, who was born with brain damage resulting in retardation and various musculoskeletal abnormalities that made it difficult for him to walk, yet he was judged as not disabled.

The lawyers, Richard Weishaup and Jonathan Stein, realized they were not dealing with an official's mistaken judgment. Instead, the trouble stemmed from the regulations used to implement the benefit program.

Health and Human Services

had adopted a five-step approach for deciding whether adults were impaired and unable to work. The regulations also listed a series of childhood diseases and impairments that could make a person under age 15 eligible for benefits.

But significantly, the regulations did not qualify a child who suffered a series of impairments that, taken together, made him disabled. Nor did they consider whether a child was disabled if his impairments were comparable to those that would prevent an adult from working.

By a 7-2 vote, the Supreme Court said the legal aid attorneys were correct.

"We conclude that the Secretary's regulations and rulings implementing the child-disability statute simply do not carry out the statutory requirement that SSI benefits shall be provided to children with 'any impairment of comparable severity to an impairment that would make an adult' unable to work," wrote Justice Harry A. Blackmun for the Court.

The Court ordered HHS to undertake an individual "functional assessment" of children to decide whether they qualify for disability benefits.

While the ruling undoubtedly has helped thousands of families—the Philadelphia attorneys say 135,000 children have qualified, thanks directly to the "functional assessments"—the new GOP leaders of Congress have cited the rapid growth of this \$5 billion-a-year entitlement program as reason for scaling it back dramatically.

Critics of the program have questioned why the government needs to pay cash benefits to families with disabled children. The poor already qualify for Medicaid to cover medical expenses. A proposal in the House would restrict benefits to children who were so disabled as to "need institutionalization." If this proposal is adopted, Congress officially will overturn the outcome in the *Zebby* case.

And if the signs are ominous for continued federal aid for poor and disabled children, they are equally so for legal services. Men-

tion the words "poor people" and "lawyers" in the new Congress, and you are likely to run into trouble.

In mid-March, House Budget Committee Chairman John R. Kasich recommended that the Legal Services Corp be phased out as part of a \$190 billion package of spending cuts. The elimination of LSC would save \$1.6 billion over five years, he said.



"Since we have lost our state funding, what happens on the federal level is crucial."

—Louis S. Rulli, executive director, Community Legal Services of Philadelphia

"Too often, lawyers funded through LSC grants have focussed on political causes and class action lawsuits rather than helping poor Americans solve their legal problems," Kasich said in his budget proposal. "A phase-out of federal funding ... will not eliminate free legal aid to the poor," he added, because "state and local governments, bar associations and other organizations already provide substantial legal aid to the poor."

The budget committees do not actually cut specific programs but rather set spending targets by category. However, by lowering the spending targets, they can force the appropriations committees in the House and Senate to reduce spend-

ing for specific programs. An aggressive budget cutter, Kasich not only submitted his overall plan to reduce spending, but also included a 10-page list of "illustrative Republican spending cuts" to go with it. That list, issued March 16, contained the proposed phase-out of the LSC.

Clinton Lyons, executive director of the National Legal Aid and Defender Association, slams Kasich for what he calls a "mindless assault" on a program that gives poor people access to justice.

He says, however, that the LSC has "weathered attempts to kill it by slow death in the past," and he predicts a bipartisan coalition in Congress will derail Kasich's plan.

Even if the LSC is not phased-out, it may face restrictions over whether LSC-funded lawyers bring class actions or sue the government. "I think the real debate will be around those issues. And that assumes there will be funding," says Alan Houseman of the Washington-based Center for Law and Policy, which specializes in litigating on behalf of the indigent.

Since it was created by Congress in 1974, the LSC has won both dedicated defenders and determined foes. In the first category was a prominent Little Rock, Ark., lawyer whose husband was the governor. From 1978 to 1980, Hillary Rodham Clinton chaired the LSC's governing board.

In the latter category was Ronald Reagan, who as California governor came to despise the rural legal aid activists who battled the state and its agricultural corporations on behalf of poor farmworkers.

Throughout his years in the White House, President Reagan tried to abolish the LSC. He succeeded in slashing the budget by 25 percent in 1981, but key Democrats in the House and Senate repeatedly rose to defend the LSC and to preserve its funding.

But this year is different. The new GOP leadership on Capitol Hill has questioned all manner of government spending, and especially programs targeted to the poor.

"The war on poverty has turned into a war against those in poverty," says Alexander D. Forger, the new president of the LSC.

A former managing partner of New York City's Millbank Tweed law firm, Forger, 72, came to Washington hoping to bring stability to the perpetually embattled agency. Instead, he finds himself fighting to defend its very existence.

"We have some [in Congress] saying we should be cut 50 percent. Others say we should be eliminated entirely. It's distressing to see the level of animosity," he says. "Personally, I find it difficult to see why some people should be denied all access to our system of justice."

**T**he LSC itself does not bring lawsuits or set policies for legal aid offices around the nation. Instead, it funds 320 independent, local programs with their own governing boards.

Generally, clients must have incomes that do not exceed 125 percent of the poverty level—a maximum of \$9,200 per year for one person or \$18,500 for a family of four.

While most local programs obtain some private or state funding, they depend on federal funds for the bulk of their support.

"If we had a substantial cut [in federal funds], we would not be the same program. We would have to close our remaining neighborhood centers" and operate from a single, center-city office, says Rulli, the Philadelphia director. "As it is, we have not replaced anyone for three years now."

Perhaps the worst consequence of the continued budget uncertainty is its impact on the staff. In its early days, legal aid work attracted idealistic, young lawyers of the 1960s. With much less fanfare, it still attracts the young idealists of the 1980s and '90s.

None can be said to be eager for affluence. The average salary last year for legal aid attorneys was \$33,700, LSC officials say.

Walz, the welfare specialist at the North Philadelphia center, is a 1989 graduate of Harvard Law School. While many of her classmates headed for jobs as law firm associates at \$60,000 to \$70,000 per

year, she leaped at a \$24,000-a-year offer to work at the North Philadelphia clinic.

"There aren't that many openings in legal services, but it was what I wanted to do from the beginning," she says.

When North Philadelphia lawyer Ackelsberg looks around his waiting room, he admits to being both puzzled and a bit depressed by the change in public perceptions.

"Every day, we see people with horrible problems, and usually we can make things better for them. It may be a mother who has lost her child support and is in danger of losing her home. Or an elderly person facing foreclosure. If we can step in and prevent that, everyone wins: the bank, the homeowner, the other property owners in the neighborhood," Ackelsberg says.

"If you save one person from becoming homeless, isn't that a good thing?"

"In my view, we are doing extraordinarily good work, work that is in the public interest," he says. "Yet these days, that seems to be considered a bad thing."

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ing conditions for Gerawan farm workers were an issue in the 1990 union  
ction campaign

April 1995

*Food & Justice*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
HON. EDWARD DEAN PRICE, JUDGE

RUBEN MARQUEZ, et al.,	)	
	)	
Plaintiff,	)	No. CV-F-90-472-EDP
	)	
vs.	)	JURY TRIAL
	)	
GERAWAN RANCHES, a California	)	Day 1
Partnership, et al.,	)	
	)	
Defendant.	)	

---

Fresno, California

June 9, 1992

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Volume 1, Pages 3 to 62, inclusive

GAIL LACY THOMAS, RPR-CM  
Official Court Reporter  
CSR 3278

1120 '0' Sheet  
Fresno, Cal. 93721  
201, 202 0609

**COPY**

1 Fresno, California

June 9, 1992

2 9:10 a.m.

3  
4 THE CLERK: Number one on the calendar,  
5 Civil-F-90-472-EDP, Ruben Marquez versus Gerawan  
6 Ranches, further proceedings.

7 THE COURT: Will counsel state their  
8 appearances for the record.

9 MR. CAMPAGNE: Yes, Your Honor. Tom  
10 Campagne appearing on behalf of the defendant.

11 MR. KANZ: On behalf of plaintiffs, Your  
12 Honor, Michael Kanz, Ellen Braff-Guajardo and  
13 Rebecca Connolly Dlott.

14 → THE COURT: In yesterday's -- the  
15 announcement in the Fresno Bee that was distributed  
16 in this area, there was an example of the most  
17 unprofessional conduct on the part of a party I've  
18 ever seen. At the conclusion of that case, I'm  
19 going to send that to the State Bar for  
20 investigation, and I'm looking at you, Mr.  
21 Campagne. I have never seen a more overt attempt to  
22 influence a jury trial in that document, and I  
23 conclude it was deliberate.

24 Further, as to all the parties in this  
25 action, and all the counsel in this case, if any

1 such occurrence occurs again, I'm going to find you  
2 in contempt, I'm going to sentence you to a term of  
3 jail in Fresno County jail. For counsel, the jail  
4 term will start after the trial concludes. For the  
5 parties, it will begin immediately. And if your  
6 appearance is necessary in court, you'll be brought  
7 into court in jail clothes.

8 Are there any questions? ←

9 MR. KANZ: No, Your Honor.

10 MR. CAMPAGNE: No, Your Honor.

11 THE COURT: All right. I am getting a bit  
12 tired of you people acting like babies.

13 Now, with regard to the joint trial  
14 exhibits, there has been an objection filed. Mr.  
15 Campagne, do you have any objection to any documents  
16 other than those listed in your document entitled,  
17 "Defendants Objections to Plaintiff's Submittal of  
18 Trial Exhibits"?

19 MR. CAMPAGNE: No, Your Honor.

20 THE COURT: All right, all of the other  
21 exhibits will be admitted at the beginning of the  
22 trial with the exception of those listed in that  
23 document.

24 Is that understood?

25 MR. KANZ: Your Honor, I submitted --

1 objections thereto have been filed. Without  
2 enumerating the subpoenas, I'm going to announce a  
3 rule concerning subpoenas in this case. If a  
4 subpoena is served on either party, and the parties  
5 object to that subpoena, the parties will be  
6 required, number one, to place the subpoena  
7 documents in an envelope. They will be delivered to  
8 the Clerk of this Court with the appropriate caption  
9 on the outside referring to the subpoena to which  
10 they're being submitted. → The Court will examine the  
11 documents and will rule on the objections without  
12 argument from counsel. This is because counsel  
13 cannot be trusted to make sensible arguments. ←

14           Plaintiffs have brought a motion to  
15 preclude the defendants from submitting evidence  
16 relating to labor organizing or a labor strike.  
17 That motion will be granted, and I might say, from  
18 the attempts of the parties to date, I have a sense  
19 that you people are taking the attitude that, "Well,  
20 you, Judge, can make the orders, but we, counsel,  
21 can get around them." I want to tell you that's  
22 wrong, and I want to tell you that you had better  
23 get over that because you're going to run into  
24 trouble in this case. Any questions?

25           MR. KANZ: No, Your Honor.

1           THE COURT: Do you have the strike  
2 sheets? Pass the strike sheets for the examination  
3 of counsel. You will have three strikes as to the  
4 trial jury. The trial jury will consist of six  
5 persons. We will pick four alternates because of  
6 the estimate of the time of trial. You will have  
7 two alternates as to the -- two challenges as to the  
8 alternates. → I anticipate that the trial will last  
9 15 days or longer based on the exhibit list and  
10 based on the demonstrated incompetence of counsel  
11 today. ← And we may need all four of the alternates.

12           When the strike sheet comes to you, you're  
13 going to be required to either put down the name and  
14 seat number of the juror or the word "pass." If you  
15 pass, you lose that challenge. However, you do not  
16 lose the right to challenge anyone then seated in  
17 the jury. Is that understood?

18           MR. CAMPAGNE: Yes, Your Honor.

19           MR. KANZ: Your Honor, would you possibly  
20 repeat that. I'm not sure that we did understand.

21           THE COURT: All right. This will be juror  
22 number one. This will be juror number eight. An  
23 additional seven jurors will be lined up in the  
24 front here. And an additional seven jurors will be  
25 lined up on the bench behind the plaintiff's seat.

1 complained about the need for repair and that the  
2 defendants have maliciously failed and refuse to  
3 effectuate those repairs.

4 → THE COURT: What does that have to do with  
5 unions, Mr. Campagne?

6 MR. CAMPAGNE: The plaintiff testified --

7 THE COURT: The plaintiff testified that  
8 he complained about a condition.

9 MR. CAMPAGNE: To the --

10 THE COURT: That the defendant failed to  
11 take care of him. What does that have to do with  
12 the union? The fact that he complained to the union  
13 is immaterial to the question. Do you understand  
14 that? And do you understand that's precisely what  
15 I'm talking about when I suspect that you're going  
16 to try to get around my order?

17 MR. CAMPAGNE: That's why I'm seeking  
18 clarification. If I may complete the sentence, Your  
19 Honor.

20 THE COURT: You completed the sentence.  
21 You can ask that question in such a way so that the  
22 term "union" does not have to come into it, and you  
23 know very well you can do it, and I charge you to do  
24 it.

25 MR. CAMPAGNE: Fine. But, Your Honor, I

1 want the Court to be aware that he may answer the  
2 question --

3 THE COURT: If he answers it -- if he  
4 answers it in that way, and I conclude that you  
5 didn't deliberately invite it, I will so rule.

6 MR. CAMPAGNE: All right.

7 THE COURT: But you're skating on thin  
8 ice. I'm telling you that right now because of your  
9 past conduct in this case.

10 MR. CAMPAGNE: My dilemma, Your Honor --

11 THE COURT: Your dilemma, is this: You're  
12 trying to try this case in the newspaper because you  
13 know you can't win it in court. That's your  
14 dilemma, and you better talk to your clients during  
15 the recess and see if you can make a reasonable  
16 offer in this case, Mr. Campagne, because there's  
17 nothing in the federal law that says that the  
18 activities concerning agricultural workers is  
19 excused because of a union dispute. And you'd  
20 better get that through your head. ←

21 MR. CAMPAGNE: I understand that, Your  
22 Honor.

23 THE COURT: All right. Anything further?

24 MR. CAMPAGNE: No.

25 MR. KANZ: Your Honor, I request

UNITED STATES DISTRICT COURT  
 EASTERN DISTRICT OF CALIFORNIA  
 HON. EDWARD DEAN PRICE, JUDGE

RUBEN MARQUEZ, et al.,	)	
	)	
Plaintiff,	)	No. CV-F-90-472-EDP
	)	
vs.	)	JURY TRIAL
	)	
GERAWAN RANCHES, a California	)	Day 4
Partnership, et al.,	)	
	)	
Defendant.	)	

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Fresno, California

June 12, 1992

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Volume 4, Pages 337 to 508, inclusive

GAIL LACY THOMAS  
 PEGGY J. SMITH  
 Official Court Reporters

**COPY**

1 is that understood?

2 INTERPRETER: Yes.

3 THE COURT: When he talks, you interpret.  
4 When he gets through interpreting, you answer in  
5 Spanish. Then he interprets the answer; is that  
6 understood?

7 All right, proceed.

8 MR. CAMPAGNE: Would the reporter please  
9 read the last question back.

10 (Question read.)

11 THE WITNESS: I do not know that. Mr.  
12 Cuevas, I got to know him in '88.

13 MR. CAMPAGNE: Q. You and some of your  
14 friends in the community drove up into California  
15 together in an automobile; is that true?

16 A. It was in a bus, not automobile.

17 Q. You took a bus from your hometown to Tijuana,  
18 didn't you?

19 A. Up to Tijuana.

20 Q. And then when you were in Tijuana, you met  
21 your -- your friends got off the bus, and you took a  
22 car to California, didn't you?

23 A. Sir, I was illegal. I did not have papers.

24 Q. But you're legal now, aren't you?

25 → THE COURT: Counsel, I stated at the

1 beginning of this case, there would be no such  
2 testimony concerning this. I cite you for  
3 misconduct, and I'll deal with you at the conclusion  
4 of the case. Please proceed to another subject.

5 MR. CAMPAGNE: Will the reporter please  
6 read back the last question -- no, the last answer.

7 THE COURT: The last answer was that he  
8 was illegal, and I'm telling you to get off that  
9 subject and stay off of it. And I'll deal with you  
10 at the conclusion of this case concerning this  
11 misconduct. Please proceed. ←

12 MR. CAMPAGNE: Q. How did you get from  
13 Tijuana to California?

14 THE COURT: Counsel, how is that material  
15 to this case? If you can prove that he has never  
16 been in California or somehow -- that otherwise his  
17 testimony concerning working for your client from  
18 1988 through 1992 is not true, that's fine. But  
19 we're not interested in travel law. Now, please  
20 proceed to the guts of this case.

21 MR. CAMPAGNE: What I'm trying to  
22 establish, Your Honor, is as to --

23 THE COURT: He got here, and he started  
24 working, and that's when your client got into  
25 trouble. Now, let's get going.

COPY

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

1			
2			
3	RUBEN MARQUEZ, et al.,	)	Case Nos. CVF90-472-EDP
4		)	CVF93-5211-EDP
5	Plaintiffs,	)	
6		)	Fresno, California
7	vs.	)	Wednesday, August 11, 1993
8		)	9:00 A.M.
9	GERAWAN RANCHES,	)	
10		)	Further hearing on motion for
11	Defendant.	)	preliminary injunction
12		)	

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE EDWARD DEAN PRICE  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For Plaintiffs:           MICHAEL KANZ  
                                  ELLEN BRAFF  
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                                  2115 Kern Street, Room 370  
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For Gerawan Ranches:    KARI LEY  
                                  CLIFF KEMPER  
                                  Thomas Campagne Law Firm  
                                  1685 N. Helm Avenue  
                                  Fresno, CA 93727  
                                  (209) 255-1637

Interpreter:             ANNA E. WATROUS  
                                  Anna E. Watrous Interpreting  
                                  Service  
                                  (209) 674-6369

Court Recorder:         DYANA DAILEY  
                                  United States District Court  
                                  Eastern District of California  
                                  1130 "O" Street, Room 5000  
                                  Fresno, CA 93721  
                                  (916) 551-2165

Juan Valencia - Direct

3

1 because it impinges on the nature of the representation that  
2 the parties are getting.

3 Please proceed.

4 MR. LEY: Thank you, Your Honor.

5 BY MR. LEY:

6 Q. Mr. Valencia, at any time, did you ever approach anyone  
7 from CRLA and ask to get out of this lawsuit?

8 A. No.

9 Q. Are you sure about that, Mr. Valencia?

10 → THE COURT: Counsel, yesterday, when I asked Mr.  
11 Kanz if he had any more affidavits signed by the plaintiffs,  
12 he produced some.

13 Did he produce one for this plaintiff?

14 MR. LEY: Yes, Your Honor.

15 THE COURT: Then why are you pussyfooting around  
16 with it? Bring that forth.

17 You are absolutely the dumbest person I have ever  
18 seen in my life. You've got the proof right there. And  
19 you -- go ahead. ←

20 MR. LEY: May I approach the Clerk, Your Honor?

21 THE COURT: You may.

22 MR. LEY: I'd like this marked as Defendant's  
23 Exhibit C.

24 (Pause.)

25 MR. LEY: May I approach the witness, Your Honor?

UNITED STATES DISTRICT COURT  
 EASTERN DISTRICT OF CALIFORNIA  
 HON. EDWARD DEAN PRICE, JUDGE

RUBEN MARQUEZ, et al.,	)	
	)	
Plaintiff,	)	No. CV-90-472-EDP
	)	
vs.	)	JURY TRIAL
	)	
GERAWAN RANCHES, a California	)	Day 19
Partnership, et al.,	)	
	)	
Defendant.	)	

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Fresno, California

July 8, 9, 1992

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Volume 19, 2907 to 3127, inclusive

GAIL LACY THOMAS, RPR-CM  
 Official Court Reporter  
 CSR No. 3278

**COPY**

1       A.     Yes.

2       Q.     And what would you say to them in that  
3 regard?

4       A.     Well, the one case, I remember, was Jose  
5 Llamas, one of the crew bosses. It was filthy.  
6 He was going to move -- leave his deposit. He was  
7 moving out. And he had a deposit on his place,  
8 and we told him that he wouldn't get his deposit  
9 until they cleaned the interior of that one  
10 particular house that he -- his crew was in.

11       Q.     Did you ever tell crew bosses that their  
12 crew wouldn't be allowed to work unless their crew  
13 did some interior cleaning?

14       A.     To my knowledge of the interior cleaning,  
15 no, but of the exterior, yes.

16       Q.     Okay, and what would you say in that  
17 regard?

18       A.     That I wouldn't schedule their crew to  
19 work until they cleaned the outside of their  
20 barracks.

21       Q.     Sir, were you ever physically present  
22 while septic lines were being worked on?

23       A.     Yes.

24       Q.     On how many occasions?

25       A.     Actually standing there, probably twice,

1 and on other occasions passing by, and I would see  
2 the septic truck there.

3 → Q. And on any of those occasions, did you  
4 ever see foreign objects being removed from  
5 pipes?

6 A. Yes.

7 Q. On what occasions and what did you see  
8 removed?

9 A. On one occasion, I saw them -- plastic  
10 bags being pulled out. Tortilla bags.

11 THE COURT: What?

12 THE WITNESS: Tortilla bags, plastic  
13 bags. ←

14 THE COURT: Thank you.

15 MR. CAMPAGNE: Q. Sir, did you have a  
16 practice or a procedure with respect to what you  
17 would do with portable toilets when septic  
18 problems would occur?

19 A. Yeah, we'd park them outside the camps.

20 Q. And you were involved in that process?

21 A. Well, Joe, Jr. is the one that moved the  
22 toilets around. Or also we would actually tell  
23 the crew bosses to drop the crews -- they'd go and  
24 get a toilet cleaned, and then in the evening,  
25 they'd park them there, and they'd get them ready

UNITED STATES DISTRICT COURT  
 EASTERN DISTRICT OF CALIFORNIA  
 HON. EDWARD DEAN PRICE, JUDGE

RUBEN MARQUEZ, et al.,	)	
	)	
Plaintiff,	)	No. CV-90-472-EDP
	)	
vs.	)	JURY TRIAL
	)	
GERAWAN RANCHES, a California	)	Day 17
Partnership, et al.,	)	
	)	
Defendant.	)	

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Fresno, California

July 6, 1992

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Volume 17, 2555 to 2734, inclusive

GAIL LACY THOMAS, RPR-CM  
 Official Court Reporter  
 CSR No. 3278

**COPY**

1 → A. Yes, Kerman Septic Service is the --  
2 is one of the companies that I initiated  
3 business with, again, because of the proximity to  
4 Kerman. When I first started, we were getting a  
5 company out of Reedley to do the pumping because  
6 Gerawans -- that's where they started on the east  
7 side of the valley, and I found it better to call  
8 Kerman Septic or somebody more closer, at least  
9 call them first so they could get there. This  
10 actual invoice wasn't mine, but that's how it came  
11 about.

12 Q. And during the period of time that you  
13 were in charge of the Lincoln Avenue Labor Camps,  
14 would you have occasion to use both the Kerman  
15 Septic Service as well as the Reedley company you  
16 were referring to earlier?

17 A. Yeah, and there's others too. I got  
18 whoever could get there the fastest.

19 Q. I see. Turning to page Roman Numeral  
20 31-3, which appears to be in May of '89. I take  
21 it this was still while you were with the  
22 company?

23 THE COURT: He testified he left in  
24 April of '89, Counsel.

25 MR. CAMPAGNE: Q. I'm sorry. This is

1 THE COURT: Who is Pascual's --

2 THE WITNESS: Pascual Perez.

3 THE COURT: Thank you.

4 MR. CAMPAGNE: Q. And by his labor  
5 camp, you mean his dormitory that was assigned to  
6 him?

7 A. Yes, sir.

8 Q. I see. And looking over all the items  
9 that are listed on this invoice, you recall those  
10 to have been expended during your tenure on that  
11 dormitory?

12 A. Yes.

13 Q. Turn the page to page 12. This appears to  
14 be a Scott's Pumping Service, September 18th,  
15 1987. Are you familiar with this occurrence,  
16 sir?

17 A. I can't remember the exact occurrence, but  
18 I'm familiar with the company.

19 Q. Did you ever use Scott's Pumping Service  
20 from time to time?

21 A. Yes.

22 Q. In reading this invoice, can you conclude  
23 where this pumping occurred at?

24 A. From the labor camp.

25 Q. And why do you conclude that it was from

1 the labor camp rather than any other facilities on  
2 the Lincoln Ranch?

3 A. One thing is, it says "main septic tank,"  
4 which indicates to me that there's more than one.  
5 They took two loads. That was the only system  
6 that was big enough to handle two loads. And it  
7 also says, "Unplug stoppage of main line," and I  
8 don't ever remember any other place on the ranch  
9 ever having stopped up sewers any place else, not  
10 the office, not the warehouse.

11 Q. Now, sir, did you on occasion, during your  
12 tenure in charge of the labor camp, see stoppages  
13 being removed?

14 A. Yes, sir.

15 Q. And approximately how many occasions did  
16 you see stoppages in the pipes being removed?

17 A. I seen them plugged a lot of times. As  
18 far as seeing actual stuff that they pulled out,  
19 only a couple.

20 Q. And during those couple of times, what did  
21 you see them pull out?

22 A. Socks, shirts, taco bags, grease. A lot  
23 of taco bags, or, excuse me, tortilla bags.

24 Q. Now, I would like to turn your attention  
25 to the next page, sir. Page 13. This one appears

1 the lines that come from the sink through the  
2 bathroom and out to the lines that go into the  
3 cesspool. This has to be for the labor camp.  
4 That's the only thing that has four lines.

5 Q. Now, sir, during the renovation that  
6 you've testified about, I believe you gave a date  
7 when it started and a date when it ended, May 1st  
8 of '88. And during that '88 renovation, did you  
9 give any instructions regarding the redesign of  
10 the piping to the septic tanks?

11 A. Yes.

12 Q. And where were the instructions that you  
13 gave in that regard?

14 A. Instead of having one main line that  
15 connected all the houses together, I separated and  
16 put four separate lines and ran two lines into  
17 each cesspool. Two into two -- I mean two into  
18 one, and two into another because we have a big  
19 blockage problem. So I got a bigger pipe and ran  
20 four separate bigger pipes to the -- to the two  
21 cesspools.

22 Q. And do you recall how big that pipe was  
23 that you ran?

24 A. I think it was six inches, but I couldn't  
25 swear.

1       A.     Excuse me. The only work that Mr. Kramer  
2 ever did for me was at the labor camp and that  
3 we're talking about here. That's the only thing  
4 that they ever did.

5       Q.     He never did anything else?

6       A.     No.

7       Q.     Looking at the first invoice there on page  
8 17, it talks about some paint. Did he supply the  
9 paint, or did you supply the paint?

10      A.     I supplied most of it. White. I supplied  
11 some, or I supplied most of it. I don't know. I  
12 do know that the -- the trim colors was something  
13 that I picked out, but what this 10 gallons of  
14 paint is, I don't know. It might be the floor  
15 paint.

16      Q.     You painted the floors?

17      A.     Yes, sir.

18      Q.     You painted the interior walls?

19      A.     Yes, sir.

20      Q.     And you painted the interior ceiling?

21      A.     Yes, sir.

22      Q.     And painted the exterior walls?

23      A.     Yes, sir.

24      Q.     And painted the exterior facial roof  
25 trim?

1 A. Yes.

2 Q. Who picked the colors?

3 A. I did.

4 Q. Next line says, "Material for eight  
5 shelves."

6 A. That would be two shelves in each  
7 bathroom. Four times two is eight.

8 Q. And the next line says, "Water supply  
9 lines?"

10 A. I'm not sure what that is, but Mr. Kramer  
11 can tell you that.

12 Q. Okay. And on the next invoice, it's just  
13 to the right of that on the same page of 17, it  
14 says, "Four shower rods, rings, curtain?"

15 A. It says, "Rooter and clean out drain  
16 lines."

17 Q. And did that work, in fact, occur?

18 A. Yes.

19 Q. And did you, in fact, get four new shower  
20 rods and four new shower rings and curtains?

21 A. Yes.

22 Q. Later it says, "Four ventilators and  
23 covers." Do you know what that is, sir?

24 A. I believe that those are the things that  
25 go on the roof, and they spin in the wind, and it

1 Q. Did you have occasion to repair  
2 thermostats prior to the renovation?

3 A. Thermostats were constantly getting broken  
4 off the wall.

5 Q. And did you repair them?

6 A. Yes.

7 Q. Did you change the air conditioning system  
8 whatsoever, or when you renovated the facilities  
9 in April of '88?

10 A. We bought four brand new top-of-the-line  
11 swamp coolers, one for each unit, and put in new  
12 duct work, ran its own system. The reason we did  
13 that is because the swamp cooler I put on -- I  
14 felt it just has an on-and-off switch. If and  
15 when that ever got broken, it would be a lot  
16 easier to fix, and we can fix it ourself.

17 Q. What did you do with the refrigeration air  
18 that was on before that?

19 A. I left it up on the roof for the heater in  
20 the winter.

21 Q. Sir, there's an entry here for checking  
22 water heaters. Were all the water heaters in good  
23 shape and repair in April of '88, to your personal  
24 knowledge?

25 A. Yes, sir, they were.

Carlson - D

2597

1 Q. To your personal knowledge, were new  
2 cabinets installed in the kitchens?

3 A. Yes.

4 Q. Were new stoves installed?

5 A. Yes.

6 Q. Were new refrigerators installed?

7 A. Yes.

8 Q. Were new sinks installed?

9 A. Yes, stainless steel.

10 Q. Were new light fixtures installed?

11 A. Some of them were, yes. The broken ones  
12 were replaced with new ones.

13 Q. Were new toilets installed?

14 A. Yes.

15 Q. There's an entry here for electric outer  
16 plates. Did you have to replace the electric  
17 plates on the sockets?

18 A. Yes. I'm not familiar with what actually  
19 did. I remember at one point in time, I think  
20 this was -- I don't think Mr. Kramer actually did  
21 that work. I think Nick Antunovich did that  
22 later. We replaced the socket covers with the  
23 metal cover.

24 Q. There's another entry here for installing  
25 exhaust fans. Do you have personal knowledge in

1 that regard, sir?

2 A. Yes, new hood exhaust fans were  
3 installed.

4 Q. And in what room, sir?

5 A. One in each kitchen. They were installed  
6 by Mr. -- Mr. Kramer and Nick Antunovich did the  
7 electric, actually hooked up the wires.

8 Q. I see.

9 THE COURT: Had there been ventilators  
10 in the kitchen before you made this installation?

11 THE WITNESS: Yes.

12 THE COURT: Thank you.

13 MR. CAMPAGNE: Q. Along that line,  
14 sir, were all of these items replacement items for  
15 things that had already been there, like the  
16 stove, for example? Had there previously been a  
17 stove?

18 A. Yes, everything except I think we put in  
19 new -- I don't think there was smoke detectors.  
20 And the new air conditioning system, like I said.  
21 But most of the other things were just replacement  
22 parts. Everything just start brand new.

23 Q. Why did you install smoke detectors?

24 A. It was safe.

25 Q. Did you speak with the County with regard

1 (Question read.)

2 THE WITNESS: Mostly before.

3 MR. CAMPAGNE: And why is it mostly  
4 before rather than after.

5 MR. KANZ: Objection, Your Honor.  
6 Speculation.

7 THE COURT: No, he indicated there was  
8 some changes made in the draining system, and I  
9 think in view of that, I'll let him answer the  
10 question.

11 MR. CAMPAGNE: Q. You may answer the  
12 question.

13 A. What was the question?

14 THE COURT: Read the question back.

15 (Question read.)

16 THE WITNESS: The improvements that I  
17 did to the -- enlarging the pipes and increasing  
18 the slope of the discharge pipes, it improved the  
19 drainage. It didn't solve the problem. I still  
20 couldn't couldn't keep the taco bags from clogging  
21 up from the sinks to the toilets, so it was still  
22 a problem, but not quite as bad as it was before. ←

23 MR. CAMPAGNE: Q. Sir, I'd like you  
24 to turn your attention to page 23. An invoice  
25 dated April of 1988. From some sort of parts

1 opened up the camp after the renovation?

2 A. No, I don't, but I can only speculate.  
3 Mr. Kramer --

4 THE COURT: Just a moment. We don't  
5 want your speculation.

6 THE WITNESS: I didn't.

7 THE COURT: I said we don't want your  
8 speculation.

9 → THE WITNESS: Mr. Kramer snaked all the  
10 lines when I was rebuilding the labor camp or  
11 renovating it, as you say. As to why it plugged  
12 up five or six days after, I don't know.

13 MR. CAMPAGNE: Q. What do you mean  
14 snaked the lines, that Mr. Kramer snaked the  
15 lines?

16 A. They put a thing that cleans the lines  
17 out. I don't really know -- Mr. Kramer can  
18 explain it better than I. ~~no~~

19 Q. The next invoice is on page 31. It  
20 appears to be signed by you; is that your  
21 signature, sir?

22 A. Yes.

23 Q. Dated December 28th, '87, from Paramount  
24 Pest Control?

25 A. Yes.

1 Q. Are you familiar with this invoice, sir?

2 A. This is the -- when we started the  
3 renovation, this is -- we did a one-shot treatment  
4 of some real powerful stuff. I don't know what  
5 exactly it was, but it was a treatment that was  
6 more powerful than if you get, like, monthly  
7 service or bi-weekly service, or however they do  
8 that. This was the one-shot thing that we used  
9 and then we started the renovation.

10 Q. Were the camps basically empty at that  
11 time, to use this more powerful stuff?

12 A. They were all empty, yes.

13 Q. Turning to the next invoice, page 32 from  
14 ABC Bedding Company. Are you familiar with this  
15 invoice, sir, of April, '87?

16 A. These were mattresses that were purchased  
17 for the labor camp.

18 Q. Sir, when you were in charge of the labor  
19 camps, did you have a policy with respect to  
20 mattresses?

21 A. We tried to keep mattresses in stock. If  
22 somebody wanted to buy one, they could come to us  
23 and we could get them a new mattress. ←

24 THE COURT: All right, let's take the  
25 recess at this time. We'll stand in recess until

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

-oOo-

RUBEN MARQUEZ, MARTIN CORRAL GARCIA, )  
MANUEL ESTRADA NEGRETE, RODOLFO )  
MOLINA, individually and on behalf )  
of all others similarly situated, )

Plaintiffs, )

vs. )

No. CV-F-90-472-REC

GERAWAN RANCHES, a California )  
Partnership; GERAWAN ENTERPRISES, a )  
California Partnership; RAY M. )  
GERAWAN and STAR R. GERAWAN, )  
individually and in their official )  
capacities as general partners of )  
Gerawan Ranches and Gerawan )  
Enterprises; GERAWAN COMPANY, INC., )  
a California corporation; MIKE )  
GERAWAN; SAUL ACOSTA; and DOES 1 )  
through 25, inclusive, )

Defendants. )

-oOo-

Fresno, California, Friday, May 24, 1991

-oOo-

DEPOSITION OF PEPE ESCAMILLA

-oOo-

Reported by:  
Veronica Guzman, C.S.R.  
Certificate No. 8456

1 A. Yes, I have.

2 Q. Do you know if the ALRB has ever contributed or  
3 donated money to KUFW?

4 A. Never.

5 Q. Have you ever heard of the CRLA?

6 A. Yes, I hear of them.

7 Q. Where did you hear of CRLA?

8 A. CRLA? California Legal Rural Assistance,  
9 something like that?

10 Q. That's correct.

11 A. They make some announcements on the radio, too.

12 Q. Go ahead.

13 A. But we stopped all that because I won't trust the  
14 guys who are at CRLA.

15 Q. You said, what, that you --

16 A. Because -- this -- all these questions come from  
17 about what things they make about Gerawan Ranches?

18 Q. Yes, that's basically what prompted this  
19 deposition.

20 A. See, I don't know how that happened but --

21 Q. All right. But you said you stopped making  
22 announcements?

23 A. Yeah, we stopped.

24 Q. You stopped allowing CRLA making announcements on  
25 the radio station?

26 A. First we allow them to make statements.

1 Q. Why did you stop?

2 A. I'm not in charge of that, see, so I -- if the  
3 radio station management say that we have to stop that,  
4 then, I'll stop that.

5 Q. Who told you that it would have to be stopped?

6 A. Charlie. Charlie was telling me.

7 Q. When did he tell you that?

8 A. A few weeks ago. A few months ago. We're still  
9 having that problem with Gerawan Ranch.

10 Q. He told you a couple of weeks ago, that was after  
11 I subpoenaed you and him to come to the deposition and  
12 started asking you guys questions about the announcements  
13 that CRLA asked you to put on-the-air?

14 A. Yes. It was after.

15 Q. All right. Now, I'm going to come back and talk  
16 about the CRLA. Well, let me go into it now. The  
17 announcement that CRLA asked KUFW to make over the air,  
18 who was it from the CRLA that made that request?

19 A. It was -- her name was Gloria, I think.  
20 Gloria -- I'm not sure. I can't remember her last name.

21 Q. Gloria Hernandez?

22 A. Yeah. Maybe Gloria Hernandez, but I cannot  
23 remember the last name.

24 Q. Who at KUFW did she request --

25 A. She requested -- that was for -- one of the  
26 volunteers and they give me the paper. See, one of the

1 guys, and he gave me the paper.

2 Q. A piece of paper where he wrote down --

3 A. He wrote down the generals of what it was about.

4 Q. So she told him what she wanted to announce --  
5 let me ask my question because otherwise it doesn't get on  
6 the record. She called the radio station, spoke to a  
7 volunteer, told him what she wanted to be announced, he  
8 wrote it down on paper and then gave the paper to you; is  
9 that correct?

10 A. Yes.

11 Q. What did the paper say?

12 A. That's about -- we're talking about a few months  
13 ago, huh, so I can't remember exactly what the paper says  
14 but it was something about Gerawan Ranch, so and -- never  
15 before we had problems with them making that kind of  
16 announcements, and I made the announcement.

17 Q. You made the announcement?

18 A. Yes.

19 Q. What did you say when you made the announcement?  
20 What were the words you spoke to the best of your  
21 recollection? I know it goes back in time and your words  
22 are not going to be perfect, but what did you say?

23 A. I can't remember exactly what I said, but what  
24 I'm sure -- I'm sure something. I'm not -- I didn't say  
25 what the paper you send me. "You can go back to them."  
26 No, I never said that. I can't remember exactly. Maybe I

1 do, but I can't remember that.

2 Q. What you said, was that accurate in terms of what  
3 the volunteer had written down on the paper?

4 A. Uh-huh.

5 Q. Just to the best of your recollection, then, see  
6 if you can tell me what you said, and it was probably what  
7 was written down on the paper; right? Right?

8 A. Yeah, probably.

9 Q. To the best of your recollection just tell me  
10 what you said?

11 A. As I said before, I read something about Gerawan  
12 Ranch and it was something about they -- they threw the  
13 workers out of the ranch, something like that, but I can't  
14 remember exactly. I can't -- I can't say it. Something  
15 that you can -- that was the problem because we wasn't  
16 being -- we wasn't organized. We keep all the records and  
17 all the stuff.

18 Q. I'm sorry. I didn't understand you. You said  
19 that you were not, and I didn't hear.

20 A. Back in that time keeping records of all that.

21 Q. Right. I understand. So you do recall that when  
22 you made the announcement it involved the Gerawan Ranches,  
23 and there was probably something in there to the effect  
24 that someone from a labor camp had been thrown out of the  
25 camp by the Gerawans?

26 A. Something like that.

1 Q. Something like that?

2 A. Something like that.

3 Q. Did the announcement also include any statement  
4 to the effect, that people who had been thrown out might  
5 be able to contact someone at the CRLA if they wanted to  
6 move back in?

7 A. Well, all the time when I make that kind of  
8 announcements I say, "For more information call Gloria and  
9 so and so."

10 Q. Do you recall who you told people to call for  
11 more information?

12 A. Yeah, it was the CRLA.

13 Q. Do you remember if you said, "Call Efrain Camacho  
14 for more information"?

15 A. No. I never put Efrain Camacho in that.

16 Q. Who?

17 A. Efrain Camacho. Was that --

18 Q. You don't recall saying his name?

19 A. No. From what I say, any time I receive those  
20 kind of announcements I put the number of the CRLA. "Call  
21 Gloria," or whatever. "Call this number for this  
22 information." I never referred to Efrain or to the name.

23 Q. Were you the only one who played this  
24 announcement?

25 A. Yes.

26 Q. Do you know how many times the announcement was

1 made?

2 A. Quite a few, 15.

3 Q. Did you make all 15 of the announcements?

4 A. Well, I mean, 15 times it was on-the-air. Only  
5 one announcement. Whoever else, 15 times on-the-air.

6 Q. I don't understand. Was it a tape-recorded  
7 announcement?

8 A. Yes.

9 Q. In other words, you tape-recorded the  
10 announcement and that tape-recording was played over the  
11 air 15 times?

12 A. Something like that.

13 Q. Then the tape was erased later?

14 A. Yes, to make another one.

15 Q. It was erased before I sent my subpoena?

16 A. Yes.

17 Q. Do you recall approximately when the announcement  
18 was made the first time?

19 A. No, I can't recall.

20 Q. Do you recall whether the note that was taken  
21 down by the volunteer during this conversation with Gloria  
22 Hernandez, whether that note said anything to the effect  
23 that there had been some kind of a settlement between the  
24 Gerawan Ranches and the CRLA?

25 A. No, I can't remember that. What I can remember  
26 now is that -- that the announcement says something about

1 the person who was involved in some kind of problem  
2 between Gerawan and, you know, my announcement was to the  
3 people. See, to the people. And I tell the people, "If  
4 you were affected with Gerawan Ranch you can call right  
5 now this number to Gloria Hernandez at the CRLA."  
6 Something like that was announced, see, but I never said  
7 that.

8 Q. Do you know if there was any other announcement  
9 that was read?

10 A. No, there was not.

11 Q. There had to have been some purpose or reason to  
12 advise people, "If you want more information call the  
13 CRLA." So you are advising people to call CRLA if they  
14 want more information, but more information in regard to  
15 what?

16 A. About the problem they had with the Gerawan  
17 Ranch.

18 Q. Regarding the housing?

19 A. Housing, something like that.

20 Q. Regarding having been removed from the housing?

21 A. Well, yes, removed. Something like that.

22 Q. Was the point of contacting CRLA to explore the  
23 possibility of getting back into the camp? Is that the  
24 gist of the announcement?

25 A. No. I will say no.

26 Q. Can you think of any other purpose for contacting

1 the CRLA other than for the possibility of possibly moving  
2 back into the camp?

3 A. No, not that. What I can think about is to let  
4 the people know how's the -- how's the -- how can I say  
5 that? Okay. The people make a complaint against Gerawan  
6 Ranch from CRLA. They went to CRLA, huh?

7 Q. Right.

8 A. And then the announcement was about a -- I can't  
9 remember exactly.

10 Q. All right. Your memory is just not that good in  
11 terms of what it said on the paper or just exactly what  
12 you said over the air; is that correct?

13 A. That's correct, yes.

14 Q. I don't want you to guess.

15 A. No, that's why I --

16 Q. Do you have any idea when the last time was that  
17 the announcement was made?

18 A. The announcement?

19 Q. It was made 15 times. Could the announcements  
20 have been made sometime in September or October of 1990?

21 A. I think it was in October.

22 Q. You think it was in October?

23 A. I think it was in October.

24 Q. Now, before announcements are made on-the-air are  
25 there any efforts made to determine whether the  
26 announcements are true or false?

1       A.   Well, we used to call the agencies like with the  
2 law. Here's or there's a lot of organizations here that  
3 makes some kind of meetings or stuff like that, and we  
4 call them and we check the information, but with CRLA at  
5 that time I didn't check with them. I was too busy, I  
6 think, that day or I don't know. Something happened, but  
7 I don't know.

8       Q.   Now, why was the tape destroyed?

9       A.   Well, we destroyed -- we destroy a tape. We  
10 erase a tape.

11      Q.   Why was it erased?

12      A.   We erase all the tapes that we use because we are  
13 limited of tapes.

14      Q.   Money-wise you are limited so you have to use the  
15 same tape over and over again?

16      A.   Over and over again.

17      Q.   Do you know a person by the name of Araseli  
18 Garcia?

19      A.   Yes.

20      Q.   Who is Araseli Garcia?

21      A.   She used to be the program director of the radio  
22 station when Cynthia Bell was manager.

23      Q.   So during the time that Cynthia Bell was the  
24 manager Araseli Garcia was the program director?

25      A.   Yes.

26      Q.   So at that time it would have been Araseli Garcia

# COPY

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RUBEN MARQUEZ, et al.,	)	Case No. CV F 90-472-EDP
	)	CV F 93-5211-EDP
Plaintiffs,	)	
	)	Fresno, California
v.	)	Tuesday, August 10, 1993
	)	9:00 A.M.
GERAWAN RANCHES,	)	
	)	Further Hearing on Motion
Defendant.	)	for Preliminary Injunction

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE EDWARD DEAN PRICE  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For Plaintiffs/Movants:	MICHAEL KANZ ELLEN BRAFF California Rural Legal Assistance 2115 Kern Street, Room 370 Fresno, CA 93721 (209) 441-8721
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Court Recorder:	DYANA DAILEY U.S. District Court 1130 "O" Street, Room 5000 Fresno, CA 93721 (209) 487-5261

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1 → THE COURT: You told him you wanted to withdraw  
2 from the lawsuit?

3 THE WITNESS: Yes, I did say.

4 BY MR. KANZ:

5 Q. And were you also asked, Mr. Valencia, whether, despite  
6 the fact that you were withdrawing, that you wished to  
7 continue having CRLA as your attorney?

8 THE COURT: That's leading, counsel. The document  
9 speaks for itself as to what he wants with regard to CRLA.  
10 Counsel, this is the mess you're in. The witness -- the  
11 witness tells you he doesn't want to continue with the  
12 lawsuit. The witness tells you he doesn't want to be repre-  
13 sented by CRLA.

14 And not only do you allow him to continue to be  
15 named in the lawsuit, but you propound him to the Court as a  
16 plaintiff in a case to get a preliminary injunction against  
17 Gerawan Ranches, which subjects him to substantial liability  
18 if the document is -- if the injunction is improperly  
19 granted.

20 MR. KANZ: Well, I have some --

21 THE COURT: You failed miserably --

22 MR. KANZ: -- few further questions, Your Honor,  
23 that I think will establish that's not true.

24 THE COURT: -- you failed miserably -- you failed  
25 miserably in your duties as an attorney to this person.

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1           MR. KANZ: Well, Your Honor, I think I have a few  
2 more questions. I think I can establish that, in fact, that  
3 is not the case.

4           THE COURT: There's nothing on file where you  
5 attempted to get this man out of this lawsuit or out of this  
6 order to show cause.

7           MR. KANZ: Your Honor --

8           THE COURT: I don't know what papers you had in  
9 your office or what secrets you might have had, but on the  
10 record there's nothing that indicates that you attempted to  
11 extricate this man from either the lawsuit or the order to  
12 show cause or the motion for preliminary injunction.

13           MR. KANZ: Your Honor, I think we can establish  
14 that -- that we had no knowledge before the TRO was filed,  
15 and that --

16           THE COURT: But once the -- once he signed that  
17 document on the 30th, you had plenty of information that  
18 would tell you that he wanted to go no further.

19           MR. KANZ: And Your Honor, we -- we have not tried  
20 to get him here. He came of his -- he was brought by the  
21 other side. We --

22           THE COURT: Counsel, the other side had every  
23 right to bring him.

24           MR. KANZ: Of course.

25           THE COURT: But you had -- did nothing to inform

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1 the Court that this man no longer desired to be a party to  
2 this lawsuit. Proceed.

3 BY MR. KANZ:

4 Q. When you met with me on July 30th, Mr. Valencia, were  
5 you asked --

6 THE COURT: Counsel, you want to testify?

7 MR. KANZ: I'll try and make a very general state-  
8 ment, Your Honor.

9 THE COURT: Well, don't make a general statement;  
10 ask a specific question.

11 BY MR. KANZ:

12 Q. Were you given any choices when you met with met re-  
13 garding your relationship with your attorney?

14 A. Well, in other words, he said, do you want to still  
15 continue. And so I said, my decision is that no; and that  
16 was all. That's all.

17 Q. Do you recall if there was any -- let me restate that.  
18 Did you consider at that time whether there was any differ-  
19 ence between withdrawing from the lawsuit and no longer  
20 being represented by your attorney?

21 THE COURT: Read that question back.

22 (The question was read back for the Court.)

23 THE COURT: Are you leading up to a discussion  
24 of -- possibly with this witness representing himself in pro  
25 per in the lawsuit?

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1 MR. KANZ: No, Your Honor. No. I'm just trying  
2 to determine whether he understood that he could withdraw  
3 from the lawsuit, but nevertheless retain his attorneys.

4 THE COURT: Well, presumably he could withdraw  
5 from the lawsuit and retain the representation of the attor-  
6 neys in other matters; but were any other matters pending?

7 MR. KANZ: He's a potential class member, Your  
8 Honor.

9 THE COURT: Well, of course he's a potential class  
10 member, but one of the problems you have in that regard is  
11 that Judge Coyle held, and I think directly, that this is  
12 not a class action and cannot be maintained as a class  
13 action, because of the different periods of time that the  
14 various parties would have been exposed to the -- the causes  
15 of harm that they contend that they were subjected to.

16 MR. KANZ: I understand your position, Your Honor,  
17 and I realize that Judge Coyle did rule that way. However,  
18 we have a duty to our clients, I think, to explain what  
19 their rights are, and that would include rights to appeal.

20 THE COURT: Well, but in this case the defen-  
21 dant -- or the witness has said repeatedly, number one, he  
22 does not wish to continue with the lawsuit, and number two,  
23 he had told you several times. And in the document you gave  
24 him to sign, which he signed, he clearly says, I do not want  
25 to talk to anybody at the CRLA. And that says to me that he

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1 wants to break off the relationship completely and totally  
2 with CRLA.

3 MR. KANZ: I think you're right, Your Honor; and  
4 the only thing I can respond is part of the relief we're  
5 seeking, if you recall, there was a notice that we wanted  
6 issued as part of the preliminary injunction that we felt  
7 would wipe the slate clean and let people make decisions  
8 once they know what their rights are under the law and what  
9 the status of the cases are. And --

10 THE COURT: Well, I think that --

11 MR. KANZ: -- we wanted --

12 THE COURT: -- I think that with this witness it  
13 would be advisable for you to prepare and file immediately a  
14 dismissal with prejudice.

15 MR. KANZ: I will do that, Your Honor.

16 THE COURT: Very good. And with that, I would say  
17 we have no further need for testimony from this witness. ←

18 MR. KANZ: Based on your order, Your Honor, no  
19 further questions.

20 THE COURT: It's not an order; it's my suggestion.  
21 Call your next witness.

22 (Whereupon, the witness was excused.)

23 MR. LEY: Your Honor, at this time defendants  
24 would like to call Juan Valencia as their next witness.

25 (Pause)

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